



233567

IN THE MATTER OF:	)	AGREEMENT FOR RECOVERY
	)	OF PAST RESPONSE COSTS
Lakeshore East/Family Golf Course OU5)	
Chicago, Cook County, Illinois	)	U.S. EPA Region 5
	)	CERCLA Docket No. _____
Illinois Center Plaza Venture, LaSalle Bank)	
National Association as successor Trustee to)	
American National Bank and Trust Company of)	
Chicago (trust numbers 46968, 56375, 45251,)	
45250, 115 883-08), PepsiAmericas, Inc.,)	
Mid-America Improvement Corporation,)	
Illinois Center Corporation, Metropolitan)	
Structures, Lakeshore East, LLC,)	
Lakeshore Links, LLC, Lakeshore East)	
Parcel P, LLC, and)	
Lakeshore East Development Group, Ltd.,)	
SETTLING PARTIES	)	PROCEEDING UNDER SECTION
	)	122(a) and (h)(1) OF CERCLA
	)	42 U.S.C. § 9622(a) and (h)(1)

**CERCLA SECTION 122(a) and (h)(1) AGREEMENT
FOR RECOVERY OF PAST RESPONSE COSTS**

TABLE OF CONTENTS

I.	<u>JURISDICTION</u>	. . . . .3
II.	<u>BACKGROUND</u>	. . . . .4
III.	<u>PARTIES BOUND</u>	. . . . .4
IV.	<u>DEFINITIONS</u>	. . . . .5
V.	<u>PAYMENT OF RESPONSE COSTS</u>	. . . . .6
VI.	<u>FAILURE TO COMPLY WITH AGREEMENT</u>	. . . . .6
VII.	<u>COVENANT NOT TO SUE BY EPA</u>	. . . . .8
VIII.	<u>RESERVATIONS OF RIGHTS BY EPA</u>	. . . . .8
IX.	<u>COVENANT NOT TO SUE BY SETTLING PARTIES</u>	. . . . .9
X.	<u>EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION</u>	. . . . .9
XI.	<u>SITE ACCESS AND INSTITUTIONAL CONTROL</u>	. . . . .10
XII.	<u>ACCESS TO INFORMATION</u>	. . . . .14
XIII.	<u>RETENTION OF RECORDS</u>	. . . . .15
XIV.	<u>NOTICES AND SUBMISSIONS</u>	. . . . .15
XV.	<u>EXHIBITS.</u>	. . . . .17
XVI.	<u>PUBLIC COMMENT</u>	. . . . .18
XVII.	<u>EFFECTIVE DATE</u>	. . . . .18

IN THE MATTER OF:	)	AGREEMENT FOR RECOVERY
	)	OF PAST RESPONSE COSTS
Lakeshore East/Family Golf Course OUS)	
Chicago, Cook County, Illinois	)	U.S. EPA Region 5
	)	CERCLA Docket No. _____
Illinois Center Plaza Venture, LaSalle Bank)	
National Association as successor Trustee to)	
American National Bank and Trust Company of)	
Chicago (trust numbers 46968, 56375, 45251,)	
45250, 115 883-08), PepsiAmericas, Inc.,)	
Mid-America Improvement Corporation,)	
Illinois Center Corporation, Metropolitan)	
Structures, Lakeshore East, LLC,)	
Lakeshore Links, LLC, Lakeshore East)	
Parcel P, LLC, and)	
Lakeshore East Development Group, Ltd.,)	
SETTLING PARTIES	)	PROCEEDING UNDER SECTION
	)	122(a) and (h)(1) OF CERCLA
	)	42 U.S.C. § 9622(a) and (h)(1)

CERCLA SECTION 122(a) and (h)(1) AGREEMENT FOR RECOVERY OF PAST RESPONSE COSTS

I. JURISDICTION

1. This Agreement is entered into pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency ("U.S. EPA") by Section 122(a) and (h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9622(a) and (h)(1), which authority has been delegated to the Regional Administrators of the U.S. EPA by U.S. EPA Delegation Nos. 14-14-C and 14-14-D, and redelegated to the Superfund Division Director by U.S. EPA Region 5 Delegation Nos. 14-14-C and 14-14-D.

2. This Agreement is made and entered into by U.S. EPA and the Illinois Center Plaza Venture, LaSalle Bank National Association as successor Trustee to American National Bank and Trust Company of Chicago (trust numbers 46968, 56375, 45251, 45250, 115 883-08), PepsiAmericas, Inc., Mid-America Improvement Corporation, Illinois Center Corporation, Metropolitan Structures, Lakeshore East, LLC, Lakeshore Links, LLC, Lakeshore East Parcel P, LLC, and Lakeshore East Development Group, Ltd. ("Settling Parties"). The Settling Parties consent to and will not contest U.S. EPA's authority to enter into this Agreement or to implement or enforce its terms.

II. BACKGROUND

3. This Agreement concerns the Lakeshore East/Family Golf Course OU5 ("Site") located at 221 North Columbus Drive, Chicago, Illinois, as more fully described in Exhibit A (legal description), and as depicted on Exhibit B (also referred to as Exhibit 16.17-2 to the Declaration of Covenants, Conditions, Restrictions and Easements for Lakeshore East, recorded with the Cook County Recorder on July 2, 2002)(Reference Map of Site dated May 19, 2003, entitled Radiological Survey Showing 18 Inch Lifts, Down Hole Borings, Areas Not Covered By Walkover Survey, Subdivided Parcels, And Former Boat Slip Locations, Lakeshore East LLC, 221 N. Columbus Drive, Chicago, Illinois), and as depicted on Exhibit C (also referred to as Exhibit 16.17-2 to the Declaration of Covenants, Conditions, Restrictions and Easements for Lakeshore East, recorded with the Cook County Recorder on July 2, 2002)(Reference Map of Site dated May 6, 2003, entitled Locations of Former Slips, Lakeshore East LLC, 221 North Columbus Drive, Chicago, Illinois - Fall 2002). U.S. EPA alleges that the Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

4. EPA alleges that in response to the release or threatened release of hazardous substances at or from the Site, EPA undertook response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604. Those response actions consisted of surface scans, sampling and overseeing investigation and cleanup work conducted by Settling Parties.

5. Settling Parties conducted the removal action for the radioactively contaminated material at the Site in accordance with a Work Plan for Investigation and Removal of Radiologically Impacted Soil, Lakeshore East, LLC, dated June 24, 2002, revised September 13, 2002, final revision dated September 30, 2002, and approved by U.S. EPA on correspondence dated October 15, 2002 ("Work Plan").

6. In performing response actions, U.S. EPA has incurred response costs at or in connection with the Site.

7. U.S. EPA alleges that the Settling Parties are responsible parties pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and are liable for response costs incurred or to be incurred at or in connection with the Site.

8. U.S. EPA and the Settling Parties recognize that this Agreement has been negotiated in good faith and that this Agreement is entered into without the admission or adjudication of any issue of fact or law.

III. PARTIES BOUND

9. This Agreement shall be binding upon U.S. EPA and upon Settling Parties and their successors and assigns. Any change in ownership or corporate or other legal status of the Settling Parties, including but not limited to, any transfer of assets or real or personal property, shall in no way alter the Settling Parties' responsibilities under this Agreement. Each signatory

to this Agreement certifies that he or she is authorized to enter into the terms and conditions of this Agreement and to bind legally the party represented by him or her.

IV. DEFINITIONS

10. Unless otherwise expressly provided herein, terms used in this Agreement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meanings assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Agreement or in any exhibit attached hereto, the following definitions shall apply:

a. "Agreement" shall mean this Agreement and any attached exhibits. In the event of conflict between this Agreement and any exhibit, the Agreement shall control.

b. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*

c. "Day" shall mean a calendar day. In computing any period of time under this Agreement, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

d. "U.S. EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

e. "Interest" shall mean interest at the rate specified for interest on investments of the U.S. EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

f. "Owner Settling Parties" shall mean Lakeshore East, LLC, Lakeshore Links, LLC, Lakeshore East Parcel P, LLC, and Lakeshore East Development Group, Ltd.

g. "Paragraph" shall mean a portion of this Agreement identified by an Arabic numeral or a lower case letter.

h. "Parties" shall mean U.S. EPA and the Settling Parties.

i. "Past Response Costs" shall mean all costs, including but not limited to direct and indirect costs, that U.S. EPA or the U.S. Department of Justice on behalf of U.S. EPA has incurred or paid at or in connection with the Site through December 15, 2004, plus accrued Interest on all such costs through such date.

j. "Section" shall mean a portion of this Agreement identified by a Roman numeral.

k. "Settling Parties" shall mean the Illinois Center Plaza Venture, LaSalle Bank National Association as successor Trustee to American National Bank and Trust Company of Chicago (trust numbers 46968, 56375, 45251, 45250, 115 883-08), PepsiAmericas, Inc., Mid-America Improvement Corporation, Illinois Center Corporation, Metropolitan Structures, Lakeshore East, LLC, Lakeshore Links, LLC, Lakeshore East Parcel P, LLC, and Lakeshore East Development Group, Ltd.

l. "Site" shall mean the Lakeshore East/Family Golf Course, OU 5 Superfund site, encompassing approximately 26 acres, located at approximately 221 North Columbus Drive in Chicago, Cook County, Illinois, and generally shown on the maps included as Exhibits B and C and Exhibit D and as more fully described in Exhibit A. The Site does not include Parcel O or Parcel P which are located on the western section of the 26 acres.

m. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

V. PAYMENT OF RESPONSE COSTS

11. Within 30 days of the effective date of this Agreement, the Settling Parties shall pay to U.S. EPA \$71,256.08.

12. Payment by Settling Parties shall be made to U.S. EPA by Electronic Funds Transfer ("EFT"). Settling Parties shall: 1) complete the required bank form; 2) include JP Morgan Chase Bank NA ABA #021000021 on the form; 3) include the U.S. EPA Account #1113399 on the form; and 4) include the U.S. EPA Region and Site/Spill ID Number 05YT. The payment shall be accompanied by a statement identifying the name and address of the parties making payment, the Site name, and the U.S. EPA docket number for this action.

13. At the time of payment, the Settling Parties shall also send notice that payment has been made to U.S. EPA in accordance with Section XIV (Notices and Submissions). Such notice shall reference the U.S. EPA Region and Site/Spill ID Number 05YT and the U.S. EPA docket number for this action.

14. The total amount to be paid pursuant to Paragraph 11 shall be deposited in the Lindsay Light II Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the Hazardous Substance Superfund.

VI. FAILURE TO COMPLY WITH AGREEMENT

15. Interest on Late Payments. If the Settling Parties fail to make any payment required by Paragraph 11 by the required due date, Interest shall continue to accrue on the unpaid balance through the date of payment.

16. Stipulated Penalty.

a. If any amounts due to U.S. EPA under Paragraph 11 are not paid by the required date, the Settling Parties shall be in violation of this Agreement and shall pay to U.S. EPA, as a stipulated penalty, in addition to the Interest required by Paragraph 15, \$1,000.00 per violation per day that such payment is late.

b. Owner Settling Parties shall be liable for stipulated penalties in the amounts set forth below if Owner Settling Parties fail to fully perform any requirement set forth in Paragraphs 30, 32 or in accordance with the Work Plan.

<u>Deliverable/Activity</u>	<u>Days 1-7</u>	<u>Days Greater than 7</u>
Failure to contact U.S. EPA in accordance with Paragraph 30	\$200/day	\$300/day
Failure to conduct work in accordance with the Work Plan	\$500/day	\$750/day
Failure to reserve restrictive covenant in Paragraph 32	\$100/day	\$500/day

c. Stipulated penalties are due and payable within 30 days of the date of demand for payment of the penalties by U.S. EPA. All payments to U.S. EPA under this Paragraph shall be identified as "stipulated penalties" and shall be made payable to "U.S. EPA Hazardous Substance Superfund." The check, or a letter accompanying the check, shall reference the name and address of the party(ies) making payment, the Site name, the U.S. EPA Region and Site Spill ID Number, and the U.S. EPA Docket Number for this action. The Settling Parties shall send the check (and any accompanying letter) to:

U.S. EPA
Program Accounting and Analysis Section
P.O. Box 70753
Chicago, Illinois 60673

d. At the time of each payment, the Settling Parties shall also send notice that payment has been made to U.S. EPA in accordance with Section XIV (Notices and Submissions). Such notice shall identify the U.S. EPA Region and Site Spill ID Number 05YT and the U.S. EPA Docket Number for this action.

e. Penalties shall accrue as provided in this Paragraph regardless of whether U.S. EPA has notified the Settling Parties of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Agreement.

17. Any Settling Party who fails or refuses to comply with the requirements of this Agreement shall be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. § 9622(h)(3). If the United States, on behalf of U.S. EPA, prevails in an action to enforce this Agreement, the Settling Parties shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

18. Notwithstanding any other provision of this Section, U.S. EPA may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Agreement. Payment of stipulated penalties shall not excuse the Settling Parties from payment as required by Section V (Payment of Response Costs) or from performance of any other requirements of this Agreement.

VII. COVENANT NOT TO SUE BY U.S. EPA

19. Except as specifically provided in Section VIII (Reservations of Rights by U.S. EPA), U.S. EPA covenants not to sue or take administrative action against the Settling Parties pursuant to Section 106 and/or 107(a) of CERCLA, 42 U.S.C. § 9606 and/or 9607(a), to recover Past Response Costs due to the presence of radioactive materials identified at the Site as of the effective date of this Agreement or for past response actions performed pursuant to the Work Plan at the Site. This covenant shall take effect upon receipt by U.S. EPA of all amounts required by Section V (Payment of Response Costs) and any amounts due under Section VI (Failure to Comply with Agreement). This covenant not to sue is conditioned upon the satisfactory performance by the Settling Parties of their reimbursement obligations under this Agreement and the satisfactory performance by the Owner Settling Parties of their recordation obligations under this Agreement. This covenant not to sue extends only to the Settling Parties and does not extend to any other person.

VIII. RESERVATIONS OF RIGHTS BY U.S. EPA

20. U.S. EPA reserves, and this Agreement is without prejudice to, all rights against the Settling Parties with respect to all matters not expressly included within the Covenant Not to Sue by U.S. EPA in Paragraph 19. Notwithstanding any other provision of this Agreement, U.S. EPA reserves all rights against the Setting Parties with respect to:

- a. liability for failure of the Settling Parties to meet a requirement of this Agreement;
- b. liability for costs incurred or to be incurred by the United States after the date of this Agreement that are not within the definition of Past Response Costs;
- c. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606 except for radioactive contaminated material removed pursuant to the Work Plan prior to the date of this Agreement;

- d. criminal liability;
- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- f. overseeing any activities conducted in accordance with the Work Plan at the Site;
- g. section 104(e) of CERCLA, 42 U.S.C. § 9604(e); and
- h. to take all actions or to direct or order such actions necessary to protect human health and the environment.

21. Nothing in this Agreement is intended to be nor shall it be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States may have against any person, firm, corporation or other entity not a signatory to this Agreement.

IX. COVENANT NOT TO SUE BY THE SETTling PARTIES

22. The Settling Parties covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to Past Response Costs or this Agreement, including but not limited to:

- a. any direct or indirect claim for reimbursement from the U.S. EPA Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

- b. any claims arising out of the response actions at the Site for which the Past Response Costs were incurred, including any claim under the United States Constitution, the Constitution of the State of Illinois, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; and

- c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to Past Response Costs.

23. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

X. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

24. Nothing in this Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Agreement. The Parties expressly reserve any

and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action that they may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

25. U.S. EPA and the Settling Parties agree that neither entry into this Agreement nor the actions undertaken by the Settling Parties in accordance with this Agreement do not constitute an admission of any liability by the Settling Parties. The Settling Parties do not admit, and retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Agreement, the validity of the facts or allegations contained in Section II of this Agreement.

26. The Parties agree that the Settling Parties are entitled, as of the effective date of this Agreement, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Agreement. The "matters addressed" in this Agreement are Past Response Costs and radioactive contamination removed from the Site in accordance with the Work Plan.

27. The Settling Parties agree that with respect to any suit or claim for contribution brought by it for matters related to this Agreement, it will notify U.S. EPA in writing no later than 60 days prior to the initiation of such suit or claim. The Settling Parties also agree that, with respect to any suit or claim for contribution brought against it for matters related to this Agreement, it will notify U.S. EPA in writing within 10 days of service of the complaint or claim upon it. In addition, the Settling Parties shall notify U.S. EPA within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Agreement.

28. In any subsequent administrative or judicial proceeding initiated by U.S. EPA, or by the United States on behalf of U.S. EPA, for injunctive relief, recovery of response costs, or other relief relating to the Site, the Settling Parties shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenant not to sue by U.S. EPA set forth in Section VII.

XI. SITE ACCESS AND INSTITUTIONAL CONTROLS

29. Access.

a. If the Site, or any other property where access is needed to implement response activities at the Site, is owned or controlled by any of the Owner Settling Parties, such Owner Settling Parties shall, commencing on the Effective Date of this Agreement, provide U.S. EPA, and its representatives, including contractors, with access at all reasonable times to the Site, or to such other property, for the purpose of conducting activities related to the Site, including, but not limited to:

1. Monitoring, investigating and overseeing, activities related to the Work Plan at the Site;
2. Verifying any data or information submitted to the United States;
3. Conducting investigations relating to contamination at or near the Site;
4. Obtaining samples;
5. Assessing the need for or planning response actions at or near the Site or conducting any oversight activities at or near the Site;
6. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Parties or their agents, consistent with Section XII (Access to Information);
7. Assessing Settling Parties' compliance with this Agreement; and
8. Verifying that no action is being taken on the former Boat Slips in violation of the terms of this Agreement;

b. Notwithstanding any provision of this Agreement, U.S. EPA retains all of its access authorities and rights, as well as all of its rights to require land use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

30. Restrictions.

a. Former Boat Slips. As of the date of this Agreement, the Owner Settling Parties agree that if the Owner Settling Parties, their contractors, representatives or agents disturb, expose or intrude upon the soils in the former Boat Slips, depicted on Exhibit C, below 18 inches from the highest contour point in the former Boat Slips (6 feet Chicago City Datum (CCD)- 585.48 Mean Sea Level (MSL)) depicted on Exhibit B, the Owner Settling Parties, their contractors, representatives and agents shall notify U.S. EPA both by telephone and in writing of plans to work in the former Boat Slips 48 hours prior to commencing such activities. Additionally, anytime soils below 18 inches from the highest contour point in the Boat Slips (6 feet CCD - 585.48 MSL) depicted on Exhibits B and C are disturbed, exposed or intruded upon in the former Boat Slips, the Owner Settling Parties, their contractors, representatives and agents must do so in accordance with the Work Plan. If material containing total radium in excess of 7.1 pCi/gram are identified, the Owner Settling Parties shall provide a letter report to U.S. EPA and the City of Chicago Department of Environment, 30 North LaSalle Street, Chicago, Illinois 60602, to the attention of Kimberly Worthington, explaining how the work was conducted in accordance with the Work Plan by December 31 of the year in which the contaminated material is discovered.

b. Harbor Drive Sidewalk. As of the date of this Agreement, the Owner Settling Parties agree that if the Owner Settling Parties, their contractors, representatives or agents conduct work in the Harbor Drive sidewalk depicted on Exhibits B and C, the Owner Settling Parties shall notify U.S. EPA and the City of Chicago both by telephone and in writing of their plans to work in the Harbor Drive sidewalk area, 48 hours prior to disturbing, exposing or intruding upon the Harbor Drive sidewalk or the soils beneath the Harbor Drive sidewalk. Additionally, anytime the Owner Settling Parties, their contractors, representatives or agents disturb, expose or intrude upon the Harbor Drive sidewalk itself or the soils beneath the Harbor Drive sidewalk depicted on Exhibits B and C, the Owner Settling Parties, their contractors, representatives and agents must do so in accordance with the Work Plan.

31. Modification of Restrictions. U.S. EPA may terminate the above restrictions in whole or in part, in writing, as authorized by law. If requested by the U.S. EPA, such writing will be executed by the Settling Parties in recordable form and recorded with the Recorder of Deeds, Cook County, Illinois. The Owner Settling Parties may modify or terminate the above restrictions in whole or in part, in writing, with the prior written approval of U.S. EPA. The Owner Settling Parties may seek to modify or terminate, in whole or in part, the restrictions by submitting to U.S. EPA, for approval, a written application that identifies each such restriction to be terminated or modified, describes the terms of each proposed modification and includes proposed revision(s) to the environmental easement and restrictive covenants described in Paragraph 32. Each application for termination or modification of any restriction shall include a demonstration that the requested termination or modification will not interfere with, impair or reduce protection of human health and the environment. If U.S. EPA makes a determination that an application satisfies the requirements of this paragraph, including the criteria specified above, U.S. EPA will notify Owner Settling Parties in writing. If U.S. EPA does not respond in writing to a request to change land use within 90 days of its receipt of that request, unless Owner Settling Parties agree to extend this period beyond 90 days, U.S. EPA may be deemed to have denied the request. If a modification to or termination of restriction is approved by U.S. EPA, Owner Settling Parties shall record the revised amended Declaration of Covenants, Restrictions and Easements for Lakeshore East and the revised environmental easement and restrictive covenants as approved by U.S. EPA with the Recorder of Deeds, Cook County, Illinois.

32. Environmental Easement and Restrictive Covenant.

a. Within thirty days of the effective date of this Agreement, the Owner Settling Parties shall record, with the Recorder of Deeds, Cook County, Illinois, the Fourth Amendment To Declaration of Covenants, Conditions, Restrictions and Easements for Lakeshore East ("Amendment"), attached as Exhibit D. This Amendment amends the Declaration of Covenants, Conditions, Restrictions and Easements for Lakeshore East dated as of June 26, 2002, which was recorded July 2, 2002 with the Cook County Recorder as Document No. 0020732020, attached as Exhibit E. The Settling Parties further agree that the language in the Amendment shall not be modified or removed from the Declaration of Covenants, Conditions, Restrictions and Easements for Lakeshore East without pre-approval from U.S. EPA, as described in Paragraph 31 above.

b. In the event of a conveyance, Owner Settling Parties' obligations under this Agreement, including, but not limited to, its obligation to provide or secure access and institutional controls, as well as to abide by such institutional controls pursuant to this Section, shall continue to be met by Owner Settling Parties unless otherwise agreed to by the United States in writing. In no event shall the conveyance release or otherwise affect the liability of Owner Settling Parties to comply with all provisions of this Agreement unless otherwise agreed to among the Parties hereto in writing.

c. The intent of Owner Settling Parties is to record a permanent Environmental Easement and Restrictive Covenant (EERC) that is applicable to all subsequent owners of the Site. The EERC applies to the former Boat Slips reflected on Exhibits B and C. The EERC provides the following: a restriction on the disturbance of soils below 18 inches from the highest contour point in the areas noted as Former Location of Slip C, D and E, in Exhibit B and Exhibit C, in perpetuity; the right to enforce said restrictions; a right of access to the Site; prior notice of disturbance, exposure, intrusion, or excavation of materials below 18 (eighteen) inches from the highest contour point within the Former Location of Slip C, D and E depicted on Exhibits B and C; and that when disturbance, exposure intrusion or excavation occur in those areas it is done in accordance with the Work Plan.

d. The Owner Settling Parties agree that the EERC should be added to the Declaration of Covenants, Restrictions and Easements for Lakeshore East and that every subsequent deed will be subject to the Declaration of Covenants, Restrictions and Easements for Lakeshore East.

33. Access/Agreements/Easement By Other Persons. For any property where access is needed to implement this Agreement, and such property is owned or controlled by persons other than Owner Settling Parties, Owner Settling Parties shall use best efforts to secure from such persons, an agreement to provide access thereto for Owner Settling Parties, its agents and contractors, as well as for the United States on behalf of U.S. EPA, as well as their representatives (including contractors), for the purpose of conducting any activity related to this Agreement including, but not limited to, those activities listed in Paragraph 29 of this Agreement within thirty (30) days of the date such access is determined to be necessary.

34. For purposes of this Section, "best efforts" includes paying reasonable sums of money in consideration of access, access easement, or agreement to release or subordinate a prior lien or encumbrance. If Owner Settling Parties are unable to obtain the access agreement(s) required under Paragraph 33, Owner Settling Parties shall promptly notify the United States in writing, and shall include in that notification a summary of the steps (including requests, offers and responses thereto) that Owner Settling Parties have taken in attempting to comply with this Section. The United States may, as it deems appropriate, assist Owner Settling Parties in obtaining such access. Owner Settling Parties shall reimburse the United States in accordance with the procedures in Section V (Payment of Response Costs), for all costs incurred by the United States in obtaining such access, including, but not limited to the cost of attorney time and the amount of monetary consideration paid.

XII. ACCESS TO INFORMATION

35. The Settling Parties shall provide to U.S. EPA, subject to paragraph 36 upon request, copies of all records, reports, or information (hereinafter referred to as "records") within their possession or control or that of their contractors or agents relating to radioactive materials at the Site, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to radioactive materials at the Site.

36. Confidential Business Information and Privileged Documents.

a. The Settling Parties may assert business confidentiality claims covering part or all of the records submitted to U.S. EPA under this Agreement to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Records determined to be confidential by U.S. EPA will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies records when they are submitted to U.S. EPA, or if U.S. EPA has notified the Settling Parties that the records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2 Subpart B, the public may be given access to such records without further notice to Settling Parties.

b. The Settling Parties may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Settling Parties assert such a privilege in lieu of providing records, they shall provide U.S. EPA with the following: 1) the title of the record; 2) the date of the record; 3) the name, title, affiliation (*e.g.*, company or firm), and address of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. If a claim of privilege applies only to a portion of a record, the record shall be provided to U.S. EPA in redacted form to mask the privileged information only. The Settling Parties shall retain all records that they claim to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Parties' favor. However, no records created or generated pursuant to the requirements of this or any other settlement with the U.S. EPA pertaining to the Site shall be withheld on the grounds that they are privileged.

37. No claim of confidentiality shall be made with respect to any data, including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

XIII. RETENTION OF RECORDS

38. Until six (6) years after the effective date of this Agreement, the Settling Parties shall preserve and retain all records now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Site or to the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary.

39. After the conclusion of the six-year document retention period in the preceding paragraph, the Settling Parties shall deliver any such records to U.S. EPA. If a Settling Party ceases to exist prior to the expiration of the six-year retention period, that Settling Party shall deliver any such records to U.S. EPA before the date on which it ceases to exist. The Settling Parties may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Settling Parties assert such a privilege, they shall provide U.S. EPA with the following: 1) the title of the record; 2) the date of the record; 3) the name, title, affiliation (*e.g.*, company or firm), and address of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. If a claim of privilege applies only to a portion of a record, the record shall be provided to U.S. EPA in redacted form to mask the privileged information only. The Settling Parties shall retain all records that they claim to be privileged until U.S. EPA has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Parties' favor. However, no records created or generated pursuant to the requirements of this or any other settlement with the U.S. EPA pertaining to the Site shall be withheld on the grounds that they are privileged.

40. The Settling Parties hereby certify individually that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, or information relating to its potential liability regarding the Site since June 14, 2001.

XIV. NOTICES AND SUBMISSIONS

41. Whenever, under the terms of this Agreement, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of this Agreement with respect to U.S. EPA and the Settling Parties.

As to U.S. EPA:

Cathleen R. Martwick or Mary Fulghum
Associate Regional Counsel
U.S. EPA (C-14J)
77 W. Jackson Blvd.
Chicago, Illinois 60604

Verneta Simon or Fredrick A. Micke, P.E.
On-Scene Coordinator
U.S. EPA (SE-6J)
77 W. Jackson Blvd.
Chicago, Illinois 60604

Larry Jensen
Senior Health Physicist
U.S. EPA(SMF-4J)
77 W. Jackson Blvd.
Chicago, Illinois 60604

Vanessa Mbogo
Comptroller's Office
U.S. EPA (-10J)
77 W. Jackson Blvd.
Chicago, Illinois 60604

As to Settling Parties:

David Carlins
VP of Development
Magellan Development Group
One West Superior, Suite 200
Chicago, Illinois 60610

Kara Hughes
Site Project Manager
Lowenberg & Associates, Inc.
One West Superior
Suite 200
Chicago, Illinois 60610

Barbara Magel
Karaganis, White & Magel Ltd.
414 North Orleans Street
Suite 810
Chicago, Illinois 60610

Sean Bezark
Greenberg Traurig, L.L.P.
77 West Wacker Drive
Suite 2500
Chicago, Illinois 60601

XV. EXHIBITS

42. This Agreement and its exhibits constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Agreement. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Agreement. The following exhibits are attached to and incorporated into this Agreement:

- a. Exhibit A - Legal description
- b. Exhibit B - Reference Map of Site dated May 19, 2003 entitled Radiological Survey Showing 18 Inch Lifts, Down Hole Borings, Areas Not Covered By Walkover Survey, Subdivided Parcels, And Former Boat Slip Locations, Lakeshore East LLC, 221 N. Columbus Drive, Chicago, Illinois (also referred to as Exhibit 16.17-2 to the Declaration of Covenants, Conditions, Restrictions and Easements for Lakeshore East, recorded with the Cook County Recorder on July 2, 2002)
- c. Exhibit C - Reference Map dated May 6, 2003 entitled Locations of Former Slips, Lakeshore East LLC, 221 North Columbus Drive, Chicago, Illinois - Fall 2002 (also referred to as Exhibit 16.17-2 to the Declaration of Covenants, Conditions, Restrictions and Easements for Lakeshore East, recorded with the Cook County Recorder on July 2, 2002)
- d. Exhibit D - Fourth Amendment to Declaration of Covenants, Conditions, Restrictions and Easements for Lakeshore East.
- e. Exhibit E - Declaration of Covenants, Conditions, Restrictions and Easements for Lakeshore East.

XVI. PUBLIC COMMENT

43. This Agreement shall be subject to a public comment period of not less than 30 days pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with Section 122(i)(3) of CERCLA, U.S. EPA may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations which indicate that this Agreement is inappropriate, improper or inadequate.

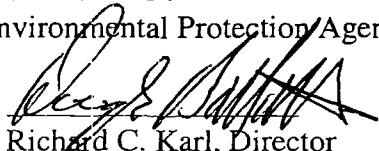
XVII. EFFECTIVE DATE

44. The effective date of this Agreement shall be the date upon which U.S. EPA issues written notice that the public comment period pursuant to Paragraph 43 has closed and that comments received, if any, do not require modification of or U.S. EPA withdrawal from this Agreement.

IT IS SO AGREED:

U.S. Environmental Protection Agency

By:



for

Richard C. Karl, Director

Superfund Division

United States Environmental Protection Agency

Region 5

Date:

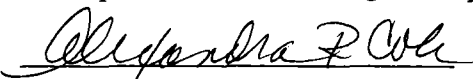
5/24/05

THE UNDERSIGNED SETTLING PARTIES enter into this Agreement in the matter of [insert U.S. EPA docket number], relating to the Lakeshore East/Family Golf Course OU5, Chicago, Illinois:

FOR SETTLING PARTY:

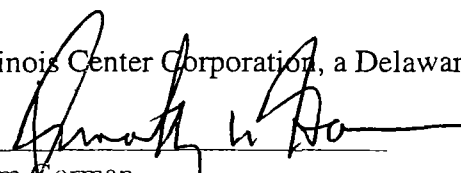
Illinois Center Plaza Venture, a limited partnership in dissolution

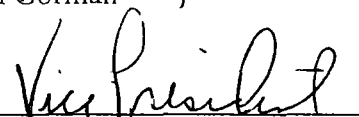
By: Its former general partners
Metropolitan Structures, a general partnership in dissolution

By: 
Alexandra R. Cole, liquidating trustee

and

Illinois Center Corporation, a Delaware corporation

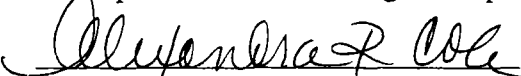
By: 
Tim Gorman

Its: 

FOR SETTLING PARTY:

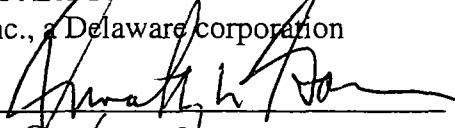
LaSalle Bank National Association as successor Trustee to
American National Bank and Trust Company of Chicago (trust
numbers 46968, 56375, 45251, 45250, 115 883-08)

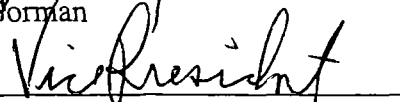
By: Its sole beneficiary
Metropolitan Structures, a general partnership in dissolution

By: 
Alexandra R. Cole, liquidating trustee

FOR SETTLING PARTY:

PepsiAmericas, Inc., a Delaware corporation

By: 
Tim Gorman

Its: 

FOR SETTTLING PARTY:

Mid-America Improvement Corporation, an Illinois corporation

By:


Tim Gorman

Its:

Vice President

FOR SETTTLING PARTY:

Illinois Center Corporation, a Delaware corporation

By:


Tim Gorman

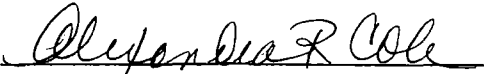
Its:

Vice President

FOR SETTTLING PARTY:

Metropolitan Structures, a general partnership in dissolution

By:


Alexandra R. Cole, liquidating trustee

FOR SETTTLING PARTIES:

Lakeshore East, LLC;
Lakeshore Links, LLC;
Lakeshore East Parcel P, LLC; and
Lakeshore East Development Group, Ltd.
One West Superior Street
Suite 200
Chicago, Illinois 60610

By:

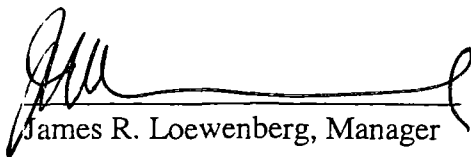
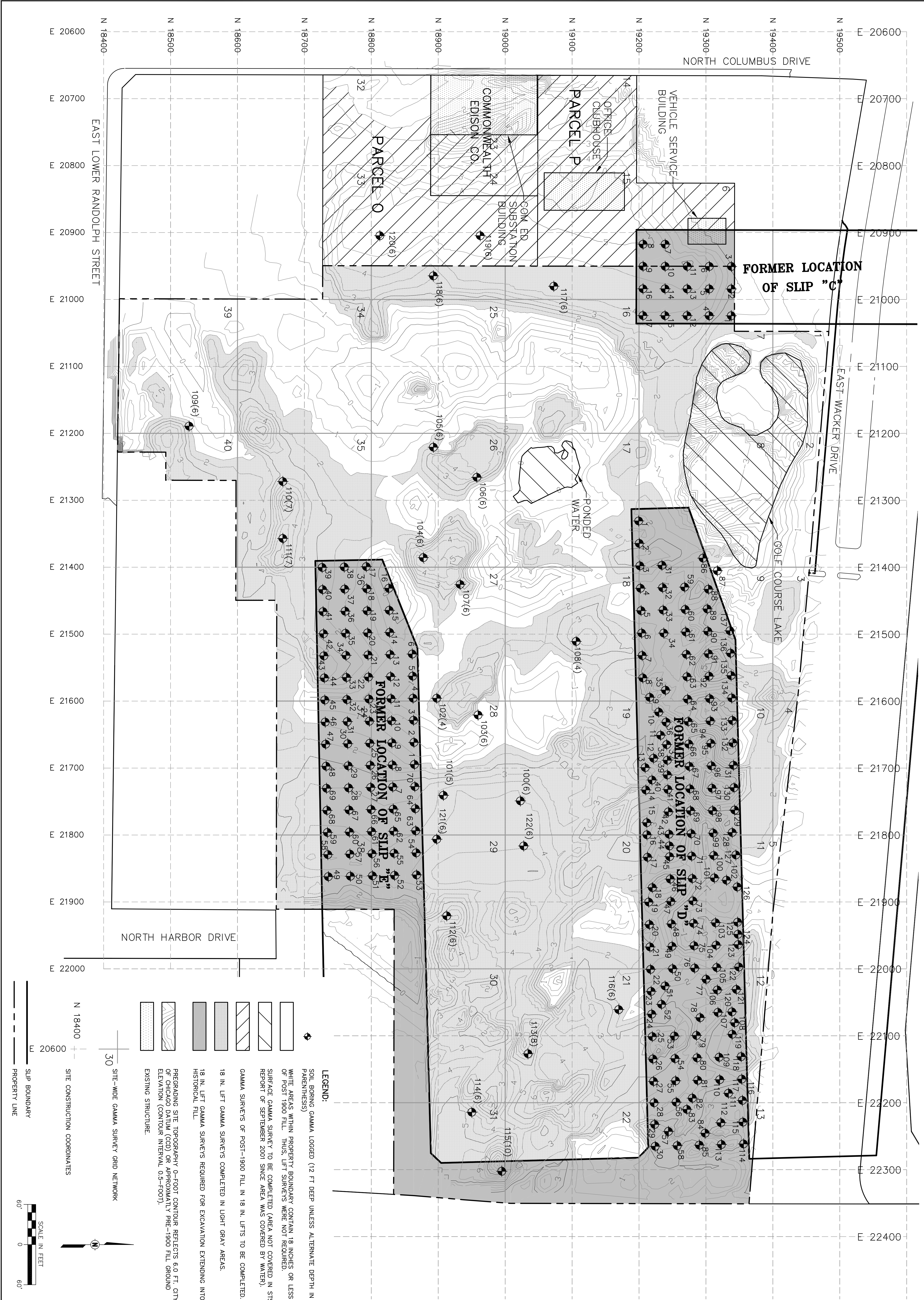

James R. Loewenberg, Manager

EXHIBIT A
221 North Columbus Drive – Legal Description

Lots 1, 2, 3, 3A, 3B, 3C, 3D, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, and 22 in Lakeshore East Subdivision of part of the unsubdivided lands lying east of and adjoining Fort Dearborn Addition to Chicago, said addition being in the Southwest Fractional Quarter of Section 10, Township 39 North, Range 14 East of the Third Principal Meridian, according to the plat thereof recorded on March 4, 2003 as Document No. 0030301045 with the Recorder Of Deeds in Cook County, Illinois.

Together with that part of the land, property and space lying above a horizontal plane having an elevation of 44.00 feet above Chicago City Datum and lying within the boundaries projected vertically of that part of said tract of land bounded and described as follows:

Beginning at a point on the East line of N. Columbus Drive (as said N. Columbus Drive was dedicated and conveyed to the City of Chicago by instrument recorded on the 5th day of June 1972, as Document 21925615) said point being 461.18 feet, as measured along said East line, North of the point of intersection of said East line with the North line of East Randolph Street (as said E. Randolph Street was dedicated and conveyed to the City of Chicago by instrument recorded on the 11th day of December 1979, as Document 25276446) and running thence north along said East line of N. Columbus Drive, a distance of 160.00 feet; thence East along a line perpendicular to said East line, a distance of 90.00 feet; thence South along a line parallel to said East line of N. Columbus Drive, a distance of 160.00 feet; thence West along a line perpendicular to the last described line, a distance of 90.00 feet to the point of beginning [*which represents the portions of Parcels 1 and 2 as designated in the Declaration that constitute the Com Ed Parcels*].



LEGEND:

SOIL BORING GAMMA LOGGED (12 FT DEEP UNLESS ALTERNATE DEPTH IN PARENTHESES)

WHITE AREAS WITHIN PROPERTY BOUNDARY CONTAIN 18 INCHES OR LESS OF POST 1900 FILL. THUS, LIFT SURVEYS WERE NOT REQUIRED.

SURFACE GAMMA SURVEY TO BE COMPLETED (AREA NOT COVERED IN STS REPORT OF SEPTEMBER 2001 SINCE AREA WAS COVERED BY WATER).

GAMMA SURVEYS OF POST-1900 FILL IN 18 IN. LIFTS TO BE COMPLETED.

18 IN. LIFT GAMMA SURVEYS COMPLETED IN LIGHT GRAY AREAS.

18 IN. LIFT GAMMA SURVEYS REQUIRED FOR EXCAVATION EXTENDING INTO HISTORICAL FILL.

PREGRADE SITE TOPOGRAPHY 0-FOOT CONTOUR REFLECTS 6.0 FT. CITY OF CHICAGO DATUM (CDD) OR APPROXIMATELY PRE-1900 FILL GROUND ELEVATION (CONTOUR INTERVAL 0.5-FOOT).

EXISTING STRUCTURE.

SCALE IN FEET

60' 0 60'

1"=60'

SITE-WIDE GAMMA SURVEY GRID NETWORK

30

SITE CONSTRUCTION COORDINATES

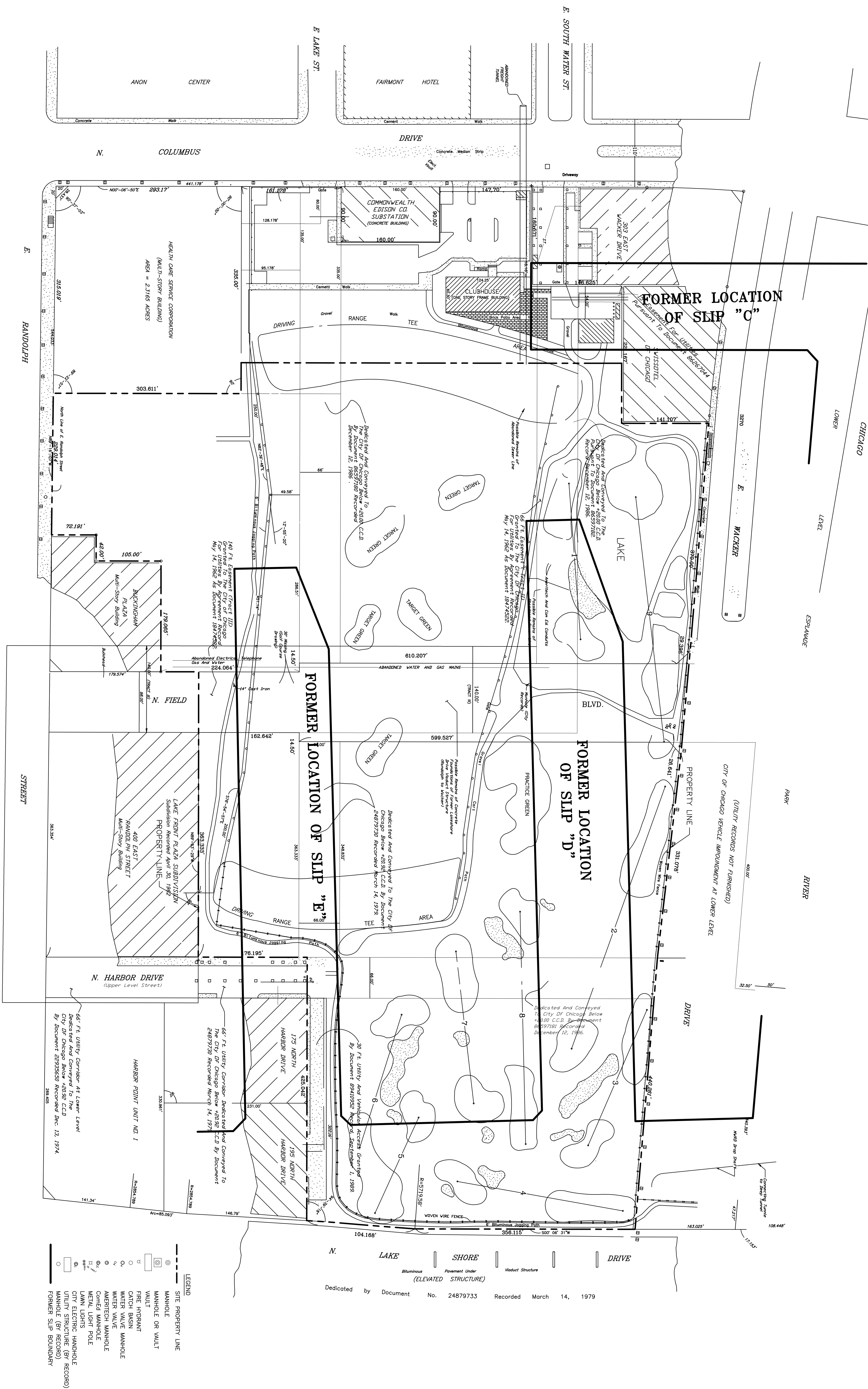
N 18400

E 20600

SLIP BOUNDARY

PROPERTY LINE

STS CONSULTING LTD. Consulting Engineers		RADIOLOGICAL SURVEY SHOWING 18 INCH LIFTS, DOWN HOLE BORINGS, AREAS NOT COVERED BY WALKOVER SURVEY, SUBDIVIDED PARCELS, AND FORMER SLIP LOCATIONS LAKESHORE EAST LLC 221 N. COLUMBUS DRIVE CHICAGO, ILLINOIS		DRAWN BY PVP	DATE 5/19/03				
STS PROJECT NUMBER 32193-XC				CHECKED BY SCK	DATE 5/19/03				
STS PROJECT FILE G132193XC-1.dwg				APPROVED BY RGB	DATE 5/19/03				
SCALE 1"=60'				CADFILE X:\PROJECTS\132193XC\REPORT\ G132193XC-1.dwg		REVISION NO.	DESCRIPTION	DATE	BY
SHEET NUMBER 1									



1. ALL COORDINATES ARE WITH REFERENCE TO THE COORDINATE SYSTEM AS ESTABLISHED BY THE BUREAU OF ENGINEERING OF THE CITY OF CHICAGO. THE LOCATION OF THE NORTH CORNER OF EAST RANDOLPH STREET IS 6 SECONDS WEST OF THE NORTH CORNER OF EAST RANDOLPH STREET. A COORDINATE VALUE OF 18442.602 FEET NORTH AND 19803.096 FEET EAST AT THE NORTHWEST CORNER OF EAST RANDOLPH STREET AND NORTH MICHIGAN AVENUE.
2. ELEVATIONS SHOWN HEREON ARE WITH RESPECT TO CHICAGO CITY DATUM.

[illegible]

LOCATIONS OF FORMER SLIPS
LAKESHORE EAST LLC
221 NORTH COLUMBUS DRIVE
CHICAGO, ILLINOIS – FALL 2002

EXHIBIT D

F	62	A
P	Br	P
T	1	V
I	2	

Doc#: 0505632012
Eugene "Gene" Moore Fee: \$62.00
Cook County Recorder of Deeds
Date: 02/25/2005 10:21 AM Pg: 1 of 20

FOURTH AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR LAKESHORE EAST

THIS FOURTH AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR LAKESHORE EAST ("Amendment") is made as of the 24th day of February, 2005 by Lakeshore East LLC, an Illinois limited liability company ("Declarant").

RECITALS:

A. Declarant, together with certain other owners who joined therein, executed that certain Declaration Of Covenants, Conditions, Restrictions And Easements For Lakeshore East dated as of June 26, 2002, which was recorded July 2, 2002 with the Cook County Recorder as Document No. 0020732020 ("Original Declaration"), as amended by First Amendment to Declaration Of Covenants, Conditions, Restrictions And Easements For Lakeshore East dated as of March 3, 2003, which was recorded March 7, 2003 with the Cook County Recorder as Document No. 0030322531, as amended by Second Amendment to Declaration Of Covenants, Conditions, Restrictions And Easements For Lakeshore East dated as of November 12, 2004, which was recorded November 19, 2004 with the Cook County Recorder as Document No. 0432427091 and re-recorded January 19, 2005 with the Cook County Recorder as Document No. 0501919099, and as amended by Third Amendment to Declaration Of Covenants, Conditions, Restrictions And Easements For Lakeshore East dated and recorded on or before the date hereof with the Cook County Recorder (collectively, as amended, the "Declaration").

B. The legal description for the aggregate of the parcels included in the Declaration is attached hereto as Exhibit R-1.

C. Declarant reserved the right pursuant to Section 16.6 of the Declaration to amend the Declaration.

Near North National Title
222 N. LaSalle
Chicago, IL 60601

RECORDING FEE 62-
DATE 2-25-05 COPIES 6
OK BY Br

CH050070.056

20p

NO1011604 4 of 4-CM

D. Declarant desires to amend the Declaration by setting forth certain requirements relating to future excavation of certain Parcels as provided in this Amendment, and to make certain other amendments in connection therewith.

NOW, THEREFORE, in consideration of the foregoing and the covenants and agreements of the parties hereto, it is agreed as follows:

1. The recitals herein contained are hereby adopted and made a part hereof.
2. Section 16.10 of the Declaration is hereby deleted and the following is substituted therefor:

"16.10 No Third Party Beneficiary. This Declaration is not intended to give or confer any benefits, rights, privileges, claims, actions or remedies to any person or entity as a third party beneficiary under any Laws or otherwise, except as provided by Section 16.17 hereof."

3. The following Section is added at the end of Section 16.16 of the Declaration:

"16.17 Environmental Easement and Restrictive Covenant.

This Section shall apply in its entirety to Parcels 2 through 16 and 17A through 22 as depicted on Exhibit 16.17-3 (map entitled Lakeshore East Development Parcel Plan with Slips). In addition the right of access provisions included in this Section shall also apply to Parcels 1 and 17 as depicted on that Exhibit 16.17-3.

U.S. EPA has issued a Completion of On-Site Work letter dated February 9, 2005 and attached to this Declaration as Exhibit 16.17-1, which concluded that the removal work conducted by the Declarant addressed any threat to human health or the environment due to radiological contamination at the Project Property in areas outside the Boat Slips. The surface of the Project Property has been surveyed for total radium levels. In addition, portions of the Project Property not within the former Boat Slip areas have been surveyed in eighteen inch lifts to 6.0 feet Chicago City Datum (CCD). All material identified, in portions of the Project Property not within the former Boat Slip areas, as having more than 7.1 pCi/gram total radium has been removed. The former Boat Slip areas have been sampled for total radium levels on ten meter centers to the water table, or below in one instance. Within the Boat Slips, the Declarant removed material containing in excess of 7.1 pCi/gram of total radium and thereby addressed any threat to human health and the environment due to radioactive contamination in areas where radiological contaminated materials were identified. As explained below, because the former Boat Slip areas were not surveyed in 18 inch lifts, the Boat Slips are subject to an environmental easement and restrictive covenant. All of the above described work has been completed under the oversight of the U.S. EPA. As noted above, all material identified on the Project Property as having more than 7.1 pCi/gram total radium has been removed and properly disposed of at a licensed facility.

Declarant, on behalf of itself, its successors, transferees and assigns, hereby reserves a right to restrict the disturbance, exposure, or intrusion of soils in the former Boat Slip areas depicted on Exhibit 16.17-2 hereto (also referred to as Exhibit B to the CERCLA Section 122(h) Agreement

for Recovery of Past Costs)(Reference Map of Site dated May 19, 2003, entitled Radiological Survey Showing 18 Inch Lifts, Down Hole Borings, Areas Not Covered By Walkover Survey, Subdivided Parcels, And Former Boat Slip Locations, Lakeshore East LLC, 221 N. Columbus Drive, Chicago, Illinois), and as depicted on Exhibit 16.17-2 (also referred to as Exhibit C to the CERCLA 122(h) Agreement for Recovery of Past Costs) (Reference Map of Site dated May 6, 2003, entitled Locations of Former Slips, Lakeshore East LLC, 221 North Columbus Drive, Chicago, Illinois - Fall 2002) without complying with the requirements of this Section. This restriction applies to soils below 18 inches from the highest contour point at the former Boat Slips in perpetuity. The Declarant also reserves the right to enforce said restrictions, a right of access and the right to an environmental easement over the land, all as more particularly hereinafter set forth.

Declarant, on behalf of itself, its successors, transferees and assigns, hereby agree that the United States, acting by and through U.S. EPA, and its successors and assigns, shall be Third Party Beneficiaries of all the benefits and rights of the easements, reservations, restrictions, covenants, exceptions, notifications, conditions and agreements herein in this Section, and that the Third Party Beneficiaries shall have the right to enforce the easements and restrictions described herein.

The purpose of this reservation is to retain in Declarant's real property rights, which will run with the land, to protect human health and the environment by reducing the risk of exposure to contaminants in the former Boat Slips and to accomplish this goal in a manner that allows the redevelopment and beneficial reuse of the Project Property to the extent reasonably possible.

Declarant intends that the restrictions and covenants that follow apply to the use of the former Boat Slips, run with the land for the benefit of the Declarant and the Third Party Beneficiaries, and are binding upon:

- a) any subsequent owner, occupants or other person acquiring an interest in the former Boat Slips/Project Property and their authorized agents, employees, or persons acting under their direction and control.

As shown on Exhibits 16.17-2 hereto the Project Property includes three former Boat Slips C, D, and E. Declarant has committed to U.S. EPA that if and when Declarant, its contractors or authorized agents plan to disturb, expose, or intrude on materials within the former Boat Slips below eighteen (18) inches from the highest contour point in the former Boat Slips depicted on Exhibits 16.17-2, Declarant shall provide U.S. EPA with at least forty-eight (48) hours advance notice of such plan to disturb, expose, or intrude. Such notice shall initially be made orally to be followed up in writing prior to the time disturbance, exposure, or intrusion proceeds. If the disturbance, exposure, or intrusion is done to address an emergency situation, no prior notice is required. Declarant shall provide U.S. EPA with notice of any emergency disturbance, exposure, or intrusion as soon as possible, but no later than 24 hours after the disturbance, exposure, or intrusion began. During any disturbance, exposure, or intrusion whether emergency or planned, within the former Boat Slips at depths greater than the eighteen (18) inches described above, Declarant shall do so in accordance with a Work Plan for Investigation and Removal of Radiologically Impacted Soil, Lakeshore East, LLC, dated June 24, 2002, revised September 13, 2002, final revision dated September 20, 2002 ("Work Plan") to ascertain if they contain total

radium in excess of 7.1 pCi/gram or such higher level approved by U.S. EPA. If the materials contain total radium in excess of that level, they shall be removed and properly disposed of at a licensed disposal facility in accordance with the Work Plan. Additionally, if materials containing total radium in excess of that level are identified, the Declarant shall provide a letter report to U.S. EPA explaining how the work performed was conducted in accordance with the Work Plan by December 31 of the year in which the contaminated material is discovered. This obligation shall be subject to the terms of Section 16.11 hereof, except for the provision that allows the holder of a Mortgage that forecloses on a Mortgage to become Declarant only if it elects to do so. The intention of this Environmental Easement and Restrictive Covenant is that it runs with the land and that any party that acquires a right, title or interest in or to any portion of the former Boat Slips is required to comply with the Environmental Easement and Restrictive Covenant.

The foregoing restrictions on use of the former Boat Slip areas are subject to applicable statutes, ordinances, rules and regulations, and take effect upon the date of recordation of this document and remain in effect until U.S. EPA issues a written determination to either modify or terminate the conditions and restrictions as stated below.

The restrictive covenants in the preceding paragraphs of this Section shall continue unless and until U.S. EPA approves the modification or rescission of these restrictive covenants. U.S. EPA may terminate, in whole or in part, the restrictions set forth above in writing, as authorized by law. The owner of the former Boat Slips may seek to modify or terminate, in whole or in part, the restrictions set forth above by submitting to U.S. EPA, a written application that identifies each such restriction to be terminated or modified, describes the terms of each proposed modification, and any proposed revisions to the environmental easement/restrictive covenants in this Declaration. Each application for termination or modification of any restriction set forth above shall include a demonstration by the Declarant or owner of the former Boat Slips that the requested termination or modification will not interfere with, impair or reduce protection of human health and the environment.

If U.S. EPA makes a determination that an application satisfies the requirements of this Section, U.S. EPA will notify the Declarant and owner of the former Boat Slips in writing. If U.S. EPA does not respond in writing within 90 days to an application to modify or terminate any restrictions, U.S. EPA shall be deemed to have denied owner's application. Any modification of these restrictive covenants shall be recorded with Recorder of Deeds, Cook County, Illinois.

U.S. EPA reserves its rights to take all actions or to direct or order such actions necessary to protect human health and the environment.

Declarant, on behalf of itself, its successors, transferees and assigns, hereby reserves, for its use, and for the use of the Third Party Beneficiaries an irrevocable, permanent and continuing right of access at all reasonable times through the Project Property, to the former Boat Slips, for any of the purposes listed below.

- a) Monitoring, investigating and overseeing activities related to the Work Plan at the Site;
- b) Verifying any data or information submitted to the United States;
- c) Conducting investigations relating to contamination at or near the Site;

- d) Obtaining samples;
- e) Assessing the need for planning or implementing response actions at or near the Site;
- f) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Parties or their agents, consistent with the CERCLA Section 122(h) Settlement Agreement;
- g) Assessing Settling Parties' compliance with the CERCLA Section 122(h) Settlement Agreement;
- h) verifying that no action is being taken on the former Boat Slips in violation of the terms of this instrument or of the CERCLA Section 122(h) Settlement Agreement;

Nothing in this Declaration shall limit or otherwise affect U.S. EPA's right of entry and access or U.S. EPA's authority to take response actions under CERCLA, the NCP, or other federal or state law.

No right of access or use by the general public to any portion of the Project Property, including the former Boat Slips, is intended or conveyed by this Section.

The federal agency having administrative jurisdiction over the interests acquired by the United States by this instrument is the U.S. EPA and any successor departments or agencies of the United States.

The access rights set forth above include the United States' and/or the Declarant's right to enter the Project Property from time to time for the purposes of performing inspections or enforcing the restrictions set forth above after permission from or reasonable notice to the owners or the owners' representative or, if applicable, the lessee. The Declarant and the United States, as Third Party Beneficiary, shall be entitled to enforce the terms of this Section in a judicial action seeking specific performance or other applicable remedies at law or in equity. The right to so enforce the conditions and restrictions in this Section are in addition to any other remedies that may be available, including, but not limited to, remedies under CERCLA. Enforcing the terms of this Section shall be at the discretion of the Declarant or the United States and any forbearance, delay or omission to exercise their rights under this Section shall not be deemed a waiver by the Declarant or the United States of such terms, or any other term, or any rights of the Declarant or the Third Party Beneficiaries under this Section. The easement and covenants within the Project Property, including the former Boat Slip areas, are enforceable by the Declarant and the United States.

Nothing in this Declaration shall be construed to enlarge the jurisdiction of federal courts or to create subject matter jurisdiction to adjudicate any claims against U.S. EPA or otherwise operate as a waiver of any sovereign immunity of the United States, and the United States expressly reserve all rights and defenses it may have in connection with any action initiated by Declarant pursuant to this Declaration.

Declarant reserves unto itself, its successors, and assigns, all rights, privileges in and to the use of the former Boat Slips which are compatible with the restrictions and rights granted here."

4. Except as expressly amended by this Amendment, the Declaration remains unmodified and in full force and effect.

IN WITNESS WHEREOF, the undersigned has executed this Amendment as of the day and year first above written.

DECLARANT:

LAKESHORE EAST LLC, an Illinois
limited liability company

By: 

Name: James R. Loewenberg

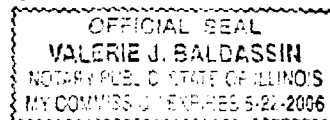
Its: Manager

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, Valerie J. Baldassin, a Notary Public in and for said County, in the State aforesaid,
DO HEREBY CERTIFY, that James Loeferberg, Manager of LAKESHORE
EAST LLC, an Illinois limited liability company, who ~~is~~ personally known to me to be the same
person whose name is subscribed to the foregoing instrument, appeared before me this day in
person and acknowledged that he/she signed and delivered the said instrument as his/her own
free and voluntary act and as the free and voluntary act of said limited liability company, for the
uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 18th day of February, 2005

Valerie J. Baldassin
Notary Public



PROPERTY ADDRESS: 221 Columbus Drive, Chicago, Illinois

PERMANENT INDEX NUMBERS FOR ALL PARCELS INCLUDED IN DECLARATION:

PRIOR TO NEW PINS ASSIGNED FOR 2005	NEW PINS TO BE ASSIGNED FOR 2005
17-10-318-014-0000	17-10-318-038-0000
17-10-318-015-0000	17-10-318-039-0000
17-10-318-016-0000	17-10-318-040-0000
17-10-318-022-0000	17-10-318-041-0000
17-10-318-023-0000	17-10-318-042-0000
17-10-318-024-0000	17-10-318-043-0000
17-10-318-026-0000	17-10-318-044-0000
17-10-318-027-0000	17-10-318-045-0000
17-10-318-029-0000	17-10-318-046-0000
17-10-318-030-0000	17-10-318-047-0000
17-10-318-032-0000	17-10-318-048-0000
17-10-318-033-0000	17-10-318-049-0000
17-10-318-035-0000	17-10-318-050-0000
17-10-318-036-0000	17-10-318-051-0000
17-10-400-015-0000	17-10-318-052-0000
17-10-400-016-0000	17-10-318-053-0000
17-10-401-010-0000	17-10-318-054-0000
17-10-401-012-0000	17-10-319-001-0000
17-10-401-013-0000	17-10-319-002-0000
	17-10-400-019-0000
	17-10-400-020-0000
	17-10-400-021-0000
	17-10-400-022-0000
	17-10-400-023-0000
	17-10-400-024-0000
	17-10-400-025-0000
	17-10-400-026-0000
	17-10-400-027-0000
	17-10-400-028-0000

This instrument was prepared by
and upon recording return to:
Joel M. Carlins and Associates, Ltd.
One West Superior St., Suite 200
Chicago, Illinois 60610
Attention: Chad Middendorf

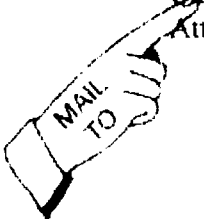


EXHIBIT R-1

Lots 1, 2, 3, 3A, 3B, 3C, 3D, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, and 22 in Lakeshore East Subdivision of part of the unsubdivided lands lying east of and adjoining Fort Dearborn Addition to Chicago, said addition being in the Southwest Fractional Quarter of Section 10, Township 39 North, Range 14 East of the Third Principal Meridian, according to the plat thereof recorded on March 4, 2003 as Document No. 0030301045 with the Recorder Of Deeds in Cook County, Illinois.

Together with that part of the land, property and space lying above a horizontal plane having an elevation of 44.00 feet above Chicago City Datum and lying within the boundaries projected vertically of that part of said tract of land bounded and described as follows:

Beginning at a point on the East line of N. Columbus Drive (as said N. Columbus Drive was dedicated and conveyed to the City of Chicago by instrument recorded on the 5th day of June 1972, as Document 21925615) said point being 461.18 feet, as measured along said East line, North of the point of intersection of said East line with the North line of East Randolph Street (as said E. Randolph Street was dedicated and conveyed to the City of Chicago by instrument recorded on the 11th day of December 1979, as Document 25276446) and running thence north along said East line of N. Columbus Drive, a distance of 160.00 feet; thence East along a line perpendicular to said East line, a distance of 90.00 feet; thence South along a line parallel to said East line of N. Columbus Drive, a distance of 160.00 feet; thence West along a line perpendicular to the last described line, a distance of 90.00 feet to the point of beginning [*which represents the portions of Parcels 1 and 2 as designated in the Declaration that constitute the Com Ed Parcels*].

EXHIBIT 16.17-1

COMPLETION OF ON SITE WORK LETTER





1-847-16-17-4
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
 REGION 5
 77 WEST JACKSON BOULEVARD
 CHICAGO, IL 60604-3500

February 9, 2005

REPLY TO THE ATTENTION OF

SE-5J

VIA FACSIMILE AND U.S. MAIL

Mr. Steven C. Kornder, Ph.D.
 STS Consultants, Ltd.
 750 Corporate Woods Parkway
 Vernon Hills, IL 60061-3153

RE: Completion of On-Site Work for the Lindsay Light II Site-Family Golf Course/Lakeshore East, 221 North Columbus Drive, RV5

Dear Mr. Kornder:

On July 17, 2002, U.S. EPA issued an Action Memorandum which documented U.S. EPA's determination that radioactive materials present at the Family Golf Course/Lakeshore East Site, located at 221 North Columbus Drive, Chicago, Illinois (Site) posed an imminent and substantial threat to public health and the environment and explained the need for a time critical removal action based on the impending development of the Site. For the purposes of this Notice of Completion, "on-site" is defined as the real property identified as Cook County's Assessor's Permanent Index Numbers: 17-10-318-040; 17-10-318-041; 17-10-318-042; 17-10-318-054; 17-10-318-043; 17-10-318-044; 17-10-318-045; 17-10-318-046; 17-10-318-047; 17-10-318-048; 17-10-400-019; 17-10-400-020; 17-10-400-021; 17-10-400-022; 17-10-400-023; 17-10-400-024; 17-10-400-025; 17-10-400-026; 17-10-318-049; 17-10-318-051; 17-10-318-052; 17-10-318-053; 17-10-400-027; 17-10-400-028; 17-10-318-050; 17-10-319-001; 17-10-319-001; and 17-10-319-002, that is bounded on the north by East Wacker Drive, to the east of Lake Shore Drive, to the south by high rise buildings and East Randolph Street, and to the west by North Columbus Drive and commercial buildings. The owners of the Site, Lakeshore East, LLC, Lakeshore Links, LLC, Lakeshore East Parcel P, LLC, and Lakeshore East Development Group, Ltd., conducted a removal action in accordance with a Work Plan for Investigation and Removal of Radiologically Impacted Soil, Lakeshore East, LLC, dated June 24, 2002, revised September 13, 2002, final revision dated September 30, 2002, and approved by U.S. EPA on correspondence dated October 15, 2002 (Work Plan). Please note that in section 1.2 of the Completion Report dated September 19, 2003 and in section 1.1 of the Completion Report Addendum dated September 23, 2004, the date stated for U.S. EPA approval of the Work Plan is not correct. Both documents state that the Work Plan was approved by U.S. EPA in correspondence dated September 30, 2002. Please correct these dates to October 15, 2002.

This Completion Letter covers only the on-site portion of the Site. This Completion Letter concludes that upon receipt of the bound final report which incorporates all editorial changes

- 2 -

requested in a separate letter dated November 2, 2004 as well as the Work Plan approval date correction, that all on-site work required will be complete and no further on-site removal activities are necessary except for activities that are required as described below which will be incorporated into the amended Declaration of Covenants, Restrictions and Easements for Lakeshore East and will be recorded with the Recorder of Deeds, Cook County, Illinois (Declaration). Any time the owner of the Site, their contractor, representative or agent plans to disturb, expose or intrude into the soils in the former Boat Slips depicted on Exhibit A, enclosed, (Reference Map of Site dated May 6, 2003, entitled Locations of Former Slips, Lakeshore East LLC, 221 North Columbus Drive, Chicago, Illinois -Fall 2002), below eighteen (18) inches from the highest contour point in the former Boat Slip areas [6 feet Chicago City Datum (CCD)-585.48 Mean Sea Level (MSL)] depicted on Exhibit B, enclosed, (Reference Map of Site dated May 19, 2003, entitled Radiological Survey Showing 18 inch Lifts, Down Hole Borings, Areas Not Covered By Walkover Survey, Subdivided Parcels, and Former Boat Slip Locations, Lakeshore East LLC, 221 N. Columbus Drive, Chicago, Illinois), the owner shall notify U.S. EPA both by telephone and in writing of plans to work in the former Boat Slips forty-eight (48) hours prior to commencing such activities. Additionally, anytime soils below eighteen (18) inches from the highest contour point in the Boat Slip [6 feet CCD-585.48 MSL] depicted on Exhibits A and B are disturbed, exposed or intruded upon in the former Boat Slips, the owner, their contractor, representative, and agent must do so in accordance with the Work Plan.

If material containing total radium in excess of 7.1 pCi/gram are identified onsite, the owner shall submit monthly status reports to U.S. EPA until the contamination is remediated. In addition, an addendum to the Completion Report must be issued by December 31 of that year to reflect remediation activities of the prior fiscal year (October 1 - September 30). The purpose of recording the Declaration with the Recorder of Deeds is to notify the public and subsequent owners of the Site of restrictions at the Site and the requirement to conduct any intrusive work in accordance with the Work Plan.

Note that certain property adjacent to the Site, specifically, Parcels O and P which are located adjacent in an easterly direction to North Columbus Drive are owned by other parties and have not been fully investigated or remediated to date. Additionally, during the course of the removal activities LSE identified material containing total radium in excess of 7.1 pCi/gram under the Harbor Drive Sidewalk which is owned by the City of Chicago. The Harbor Drive Sidewalk is located in City of Chicago right-of-way (west side of Harbor Drive) just off the southeast portion of the Site. If the owner of the Site, their contractor, representative or agent conducts work in the Harbor Drive sidewalk, the owner shall notify U.S. EPA and the City of Chicago of their plans to work in the Harbor Drive sidewalk area, forty-eight (48) hours prior to disturbing, exposing or intruding upon the Harbor Drive sidewalk or the soils beneath the Harbor Drive sidewalk. Additionally, anytime the owner of the Site, their contractor, representative or agent disturbs, exposes or intrudes upon the Harbor Drive sidewalk itself or the soils beneath the Harbor Drive sidewalk, the owner of the Site, their contractor, representative and agent must do so in accordance with the Work Plan.

- 3 -

The July 17, 2002 Action Memorandum sets forth the work to be completed:

- 1) Develop a Work Plan for the radiological assessment of the Site.
- 2) Develop a Quality Assurance Plan.
- 3) Develop and implement a radiological site health and safety plan.
- 4) Conduct land surveying to the extent necessary to establish a grid system to locate all property boundaries, special features (pipes, storage tanks, etc.), and sample locations.
- 5) Place borings in critical locations (grid corners, high exposure rate areas, special features, etc.). For the purpose of measuring subsurface radiation levels. Measurements shall be recorded at each 6 inch depth until the natural soils are reached or radiation levels reach background, whichever is the greatest depth.
- 6) Collect soil samples from the borings and analyze for radionuclide content and RCRA characteristics. These results will then be used by the PRP or buyer to correlate subsurface radiation levels and radionuclide content.
- 7) Conduct off-site surveying and sampling as necessary and, at a minimum, implement 40 CFR 192, if deemed necessary should extensive contamination be discovered beyond current site boundaries.
- 8) Based upon soil results, remove, transport and dispose of all characterized or identified hazardous substances, pollutants, wastes or contaminants at a RCRA/CERCLA approved disposal facility in accordance with the U.S. EPA off-site rule.

In total, 4639.8 tons of thorium impacted soil were shipped to Envirocare in Clive, Utah. On September 19, 2003, STS Consultants Ltd. submitted a draft report on their activities at the Site, as required by the Work Plan. In addition, Addendum I to the report was submitted on September 23, 2004.

U.S. EPA's Superfund Division performed oversight of the PRP's activities at this Site. Additionally, the Superfund Division reviewed the STS Consultants, Ltd. Lakeshore East Completion Report and Addendum.

This notice of completion in no way releases Lakeshore East LLC, Lakeshore Links, LLC, Lakeshore East Parcel P, LLC, and Lakeshore East Development Group, Ltd. from any potential future obligations to perform additional work to address the same or other conditions at the Site. Similarly, this notice of completion does not release Lakeshore East LLC, Lakeshore Links, LLC, Lakeshore East Parcel P, LLC, and Lakeshore East Development Group, Ltd. from any recordkeeping or other obligations.

- 4 -

Please contact me at (312) 886-5123 or Cathleen Martwick, Associate Regional Counsel at (312) 886-7166, if you have any questions concerning this letter.

Sincerely,

Fredrick A. Micke

Fredrick A. Micke, P.E.
On-Scene Coordinator, ERB #3

Enclosures

cc: David J. Carins, Magellan Dev. Group w/o Enclosures

EXHIBIT 16.17-2

**BOAT SLIP AREAS AS SHOWN ON EXHIBITS B AND C TO THE CERCLA SECTION
122(H) AGREEMENT FOR RECOVERY OF PAST COSTS**

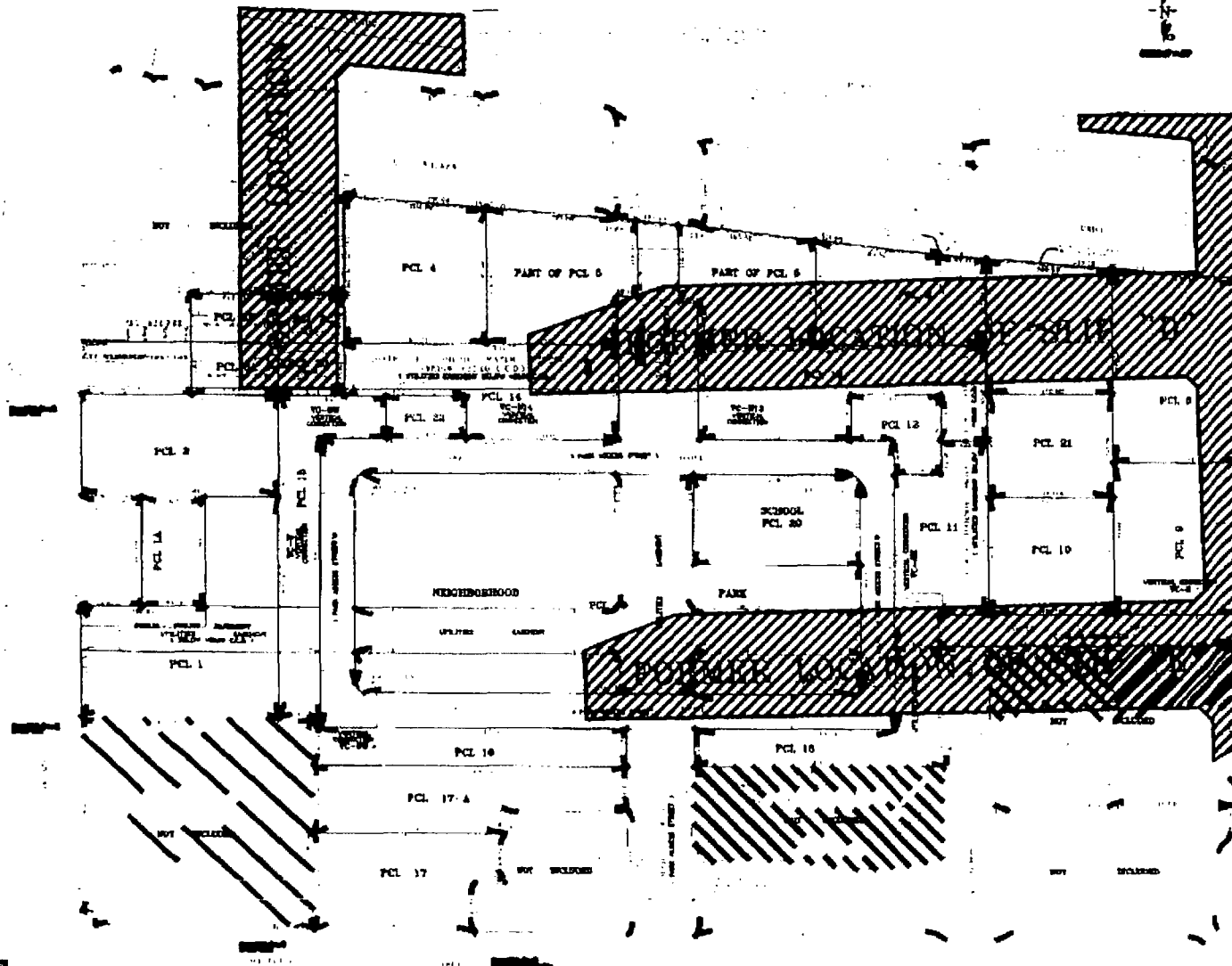
EXHIBIT 16.17-3

LAKESHORE EAST DEVELOPMENT PARCEL PLAN WITH SLIPS

DATE: JANUARY 27, 1970
JOB NO. 60306-A
PREPARED FOR: LAKESHORE EAST, L.L.C.
PREPARED BY:

ie

CONFIDENTIAL



☐ - NOYNE IN DEPT 1
WITHIN 100000
MILES

NOTE:
LOCATIONS OF THE VERTICAL CONNECTIONS ARE APPROXIMATE.

REF ID: A66084
POL. & THRUOUT POL. OF AME. PACIFIC, RECOMMENDATIONS

ELEVATIONS SHOWN HEREIN ARE WITH RESPECT TO CHICAGO CITY DATUM (1853)

(~~XXXXXXXXXX~~)

COPY

0505632009

Doc#: 0505632009
Eugene "Gene" Moore Fee: \$50.00
Cook County Recorder of Deeds
Date: 02/25/2005 10:17 AM Pg: 1 of 14

**THIRD AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS FOR LAKESHORE EAST**

THIS THIRD AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR LAKESHORE EAST ("Amendment") is made as of the 24th day of February, 2005, by Lakeshore East LLC, an Illinois limited liability company ("Declarant" and "Owner" of Parcels 16, 17 and 17A as shown on Exhibit 1-1 attached hereto).

RECITALS:

A. Declarant, together with certain other owners who joined therein, executed that certain Declaration Of Covenants, Conditions, Restrictions And Easements For Lakeshore East dated as of June 26, 2002, which was recorded July 2, 2002 with the Cook County Recorder as Document No. 0020732020 ("Original Declaration"), as amended by First Amendment to Declaration Of Covenants, Conditions, Restrictions And Easements For Lakeshore East dated as of March 3, 2003, which was recorded March 7, 2003 with the Cook County Recorder as Document No. 0030322531, and as amended by Second Amendment to Declaration Of Covenants, Conditions, Restrictions And Easements For Lakeshore East dated as of November 12, 2004, which was recorded November 19, 2004 with the Cook County Recorder as Document No. 0432427091, and re-recorded January 19, 2005 with the Cook County Recorder as Document No. 0501919098 (collectively, as amended, the "Declaration").

B. The legal description for the aggregate of the parcels included in the Declaration is attached hereto as Exhibit R-1.

C. Declarant reserved the right pursuant to Section 16.6 of the Declaration to amend the Declaration if it determines in good faith that the amendment does not have a material adverse effect on any Parcel Owner (as defined in the Declaration) that does not consent to the

ND1011604 1 of 4 -CM

amendment, which amendment is effective upon recording of such amendment, and which amendment need only be executed by Declarant.

D. Declarant desires to amend the Declaration to reconfigure Parcels 17A and 17B as they existed prior to this Amendment, and to make certain other amendments in connection therewith.

E. Declarant has determined in good faith that this Amendment does not have a material adverse effect on any Parcel Owner (as defined in the Declaration) that is not consenting to this Amendment, it being acknowledged that Declarant is also joining in this Amendment as the Owner of Parcels 16, 17 and 17A, and that this Amendment therefore need only be executed by Declarant.

NOW, THEREFORE, in consideration of the foregoing and the covenants and agreements of the parties hereto, it is agreed as follows:

1. The recitals herein contained are hereby adopted and made a part hereof.
2. Exhibit 1-1 that was attached to the Declaration is hereby deleted and Exhibit 1-1 attached hereto is substituted therefor.
3. In Article I of the Declaration, the definition of "Streets" is hereby deleted and the following substituted therefor:

"Streets: The portion of Project Property designated on the Plans as (a) streets, (b) sidewalks, including those upper level sidewalks designated on the Plans as "Elevated Sidewalks" (such designated elevated sidewalks collectively the "Elevated Sidewalks"), the upper level sidewalks located on Temporary Upper East Street, Upper Harbor Drive Connection Area, and the Pedestrian Bridge, and the upper level sidewalks adjoining Upper Level Streets, and (c) the three park areas located within such streets, i.e., within (i) Temporary Upper East Street ("East Park"), (ii) the west entry boulevard ("West Park"), and (iii) Upper Harbor Court ("Northeast Park", which together with East Park and West Park are herein referred to as the "Street Parks"), together with related improvements thereto designated by Declarant at the time they are to be constructed, e.g., drainage, lighting, signals, landscaping. The Streets include Park Drive and the other Park Access Streets, the temporary street which will become a permanent walkway area at the upper level of the southern portion of Parcels 9 and 10 ("Temporary Upper East Street"), all Upper Level Streets, including Upper Harbor Court, although Upper Harbor Court may not be dedicated if an Upper Harbor Court Private Election is made, the street and walkway at the lower level of the southern portion of Parcels 9, 10 and 11 ("Lower East Street"), the extension of existing upper Harbor Drive to the north (including any future extension thereof over the easterly portion of Parcel 6 ("Upper Harbor Drive Connection Area") to access any extension of upper Wacker Drive that may be constructed in the future as shown in the PD), the street, although it may not be dedicated, at the lower level of the easterly portion of Parcels 6, 11 and 13 ("Lower Harbor Drive"), the street,

although it may not be dedicated, at the lower level of the southerly portion of Parcels 3A and 3D, and the northerly portion of Parcel 14 ("Lower East South Water") and the other streets, sidewalks, and the Street Parks shown on the Plans."

4. In Section 4.1 of the Declaration, the second sentence that begins with the words "If Owners of Parcels..." and ends with the words "...areas owned by them." is hereby deleted and the following substituted therefor:

"If Owners of Parcels on which Vertical Connections are to be located so elect ("Supported Vertical Connections"), however, such Owners (each a "Supporting VC Owner") may, to the extent consistent with the PD, retain fee ownership and the right to utilize the area below the lower level of such Vertical Connections and the area above the upper level of such Vertical Connection (individually and collectively, as the context requires "VC Underlying Fee Parcels") for their own uses, e.g., parking garages, equipment or storage facilities, and shall in all events have the right to utilize adjoining areas owned by them."

5. In Section 4.2 of the Declaration, the second sentence that begins with the words "Notwithstanding the foregoing, ..." and ends with the words "...by the Supporting VC Owner as provided herein)." is hereby deleted and the following substituted therefor:

"Notwithstanding the foregoing, it shall be the responsibility of the Owner of Parcel 4 to construct VC-NW, the Owner of Parcel 3 to construct VC-W, and the Owner of Parcel 17A to construct VC-SW (such owners as to each of their respective Vertical Connections is herein referred to as the "Responsible VC Owner"), together with any related VC Supporting Vertical Improvements (other than any VC Support Columns which will be constructed by the Supporting VC Owner as provided herein)."

6. Exhibit 8.3.1 that was attached to the Declaration is hereby deleted and Exhibit 8.3.1 attached hereto is substituted therefor.

7. Except as expressly amended by this Amendment, the Declaration remains unmodified and in full force and effect.

IN WITNESS WHEREOF, the undersigned has executed this Amendment as of the day and year first above written.

**DECLARANT AND OWNER OF
PARCELS 16, 17 AND 17A:**

~~LAKE SHORE EAST LLC~~, an Illinois
limited liability company

By: 

Name: Joel M. Carlin

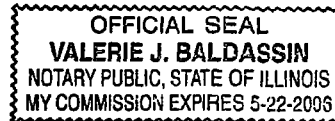
Its: Manager

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, Valerie Baldassin a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that Joel Carlin, Manager of LAKESHORE EAST LLC, an Illinois limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 18th day of February, 2005.

Valerie Baldassin
Notary Public



**CONSENT TO THIRD AMENDMENT TO DECLARATION OF COVENANTS,
CONDITIONS, RESTRICTIONS AND EASEMENTS FOR LAKESHORE EAST**

The undersigned is the holder of a Mortgage which was recorded July 2, 2002 with the Cook County Illinois Recorder as Document No. 0020731607 (together with the other loan documents related thereto, as they may be amended, "Loan Documents"), hereby consents to this Amendment and acknowledges and agrees that the Loan Documents continue to be subject and subordinate to the Declaration as amended by the Amendment..

LASALLE BANK NATIONAL
ASSOCIATION, as Administrative Agent
and Lender

By: _____

Name: _____

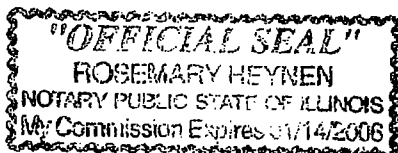
Its: COMMERCIAL BANKING OFFICER

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, Rosemary Heynen, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that JASON MANSKEZ, Com/Bkg Officer of LASALLE BANK NATIONAL ASSOCIATION, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said entity, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 24 day of FEBRUARY, 2005.

Rosemary Heynen
Notary Public



PROPERTY ADDRESS: 221 Columbus Drive, Chicago, Illinois

PERMANENT INDEX NUMBERS:

PRIOR TO NEW PINS ASSIGNED FOR 2005	NEW PINS TO BE ASSIGNED FOR 2005
17-10-318-014-0000	17-10-318-038-0000
17-10-318-015-0000	17-10-318-039-0000
17-10-318-016-0000	17-10-318-040-0000
17-10-318-022-0000	17-10-318-041-0000
17-10-318-023-0000	17-10-318-042-0000
17-10-318-024-0000	17-10-318-043-0000
17-10-318-026-0000	17-10-318-044-0000
17-10-318-027-0000	17-10-318-045-0000
17-10-318-029-0000	17-10-318-046-0000
17-10-318-030-0000	17-10-318-047-0000
17-10-318-032-0000	17-10-318-048-0000
17-10-318-033-0000	17-10-318-049-0000
17-10-318-035-0000	17-10-318-050-0000
17-10-318-036-0000	17-10-318-051-0000
17-10-400-015-0000	17-10-318-052-0000
17-10-400-016-0000	17-10-318-053-0000
17-10-401-010-0000	17-10-318-054-0000
17-10-401-012-0000	17-10-319-001-0000
17-10-401-013-0000	17-10-319-002-0000
	17-10-400-019-0000
	17-10-400-020-0000
	17-10-400-021-0000
	17-10-400-022-0000
	17-10-400-023-0000
	17-10-400-024-0000
	17-10-400-025-0000
	17-10-400-026-0000
	17-10-400-027-0000
	17-10-400-028-0000

This instrument was prepared by
and upon recording return to:
Perkins Coie, LLP
131 S. Dearborn Street Suite 1700
Chicago, Illinois 60603
Attention: Edward E. Wicks

EXHIBIT R-1

Lots 1, 2, 3, 3A, 3B, 3C, 3D, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, and 22 in Lakeshore East Subdivision of part of the unsubdivided lands lying east of and adjoining Fort Dearborn Addition to Chicago, said addition being in the Southwest Fractional Quarter of Section 10, Township 39 North, Range 14 East of the Third Principal Meridian, according to the plat thereof recorded on March 4, 2003 as Document No. 0030301045 with the Recorder Of Deeds in Cook County, Illinois.

Together with that part of the land, property and space lying above a horizontal plane having an elevation of 44.00 feet above Chicago City Datum and lying within the boundaries projected vertically of that part of said tract of land bounded and described as follows:

Beginning at a point on the East line of N. Columbus Drive (as said N. Columbus Drive was dedicated and conveyed to the City of Chicago by instrument recorded on the 5th day of June 1972, as Document 21925615) said point being 461.18 feet, as measured along said East line, North of the point of intersection of said East line with the North line of East Randolph Street (as said E. Randolph Street was dedicated and conveyed to the City of Chicago by instrument recorded on the 11th day of December 1979, as Document 25276446) and running thence north along said East line of N. Columbus Drive, a distance of 160.00 feet; thence East along a line perpendicular to said East line, a distance of 90.00 feet; thence South along a line parallel to said East line of N. Columbus Drive, a distance of 160.00 feet; thence West along a line perpendicular to the last described line, a distance of 90.00 feet to the point of beginning [*which represents the portions of Parcels 1 and 2 as designated in the Declaration that constitute the Com Ed Parcels*].

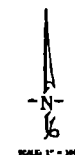
EXHIBIT 8.3.1

LAND PARCEL PERCENTAGE

<u>PARCEL</u>	
Parcel 1	7.84%
Parcel 2	5.26%
Parcel 3	0.01%
Parcel 3A	1.16%
Parcel 3B	1.09%
Parcel 3C	0.87%
Parcel 3D	0.93%
Parcel 4	5.27%
Parcel 5	8.76%
Parcel 6	4.35%
Parcel 7	4.30%
Parcel 8	6.68%
Parcel 9	6.32%
Parcel 10	4.90%
Parcel 11	4.63%
Parcel 12	1.56%
Parcel 13	6.12%
Parcel 14	5.52%
Parcel 15	4.32%
Parcel 16	1.28%
Parcel 17	10.69%
Parcel 17A	.22%
Parcel 18	3.60%
Parcel 21	3.42%
Parcel 22	0.90%
	100.00%

EXHIBIT 1-1

**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS
AND EASEMENTS FOR LAKESHORE EAST.**



SHEET 3 OF 4

DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS
AND EASEMENTS FOR LAKESHORE EAST.



ie
consultants
International Engineering Consultants, Inc.
198 W. Randolph St. Suite 1750
Chicago, Illinois 60601
Tel. (312) 830-9023 / Fax. (312) 950-8870

NOTE:
LOCATIONS OF THE VERTICAL CONNECTIONS AND FEEDWAY CONNECTIONS
ARE APPROXIMATE.

ELEVATIONS SHOWN HEREON ARE WITH RESPECT TO CHICAGO CITY DATUM (C.C.D.)

INTERMEDIATE LEVEL
(APPROXIMATELY +26.00 C.C.D.)
SHEET 2 OF 4

**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS
AND EASEMENTS FOR LAKESHORE EAST.**



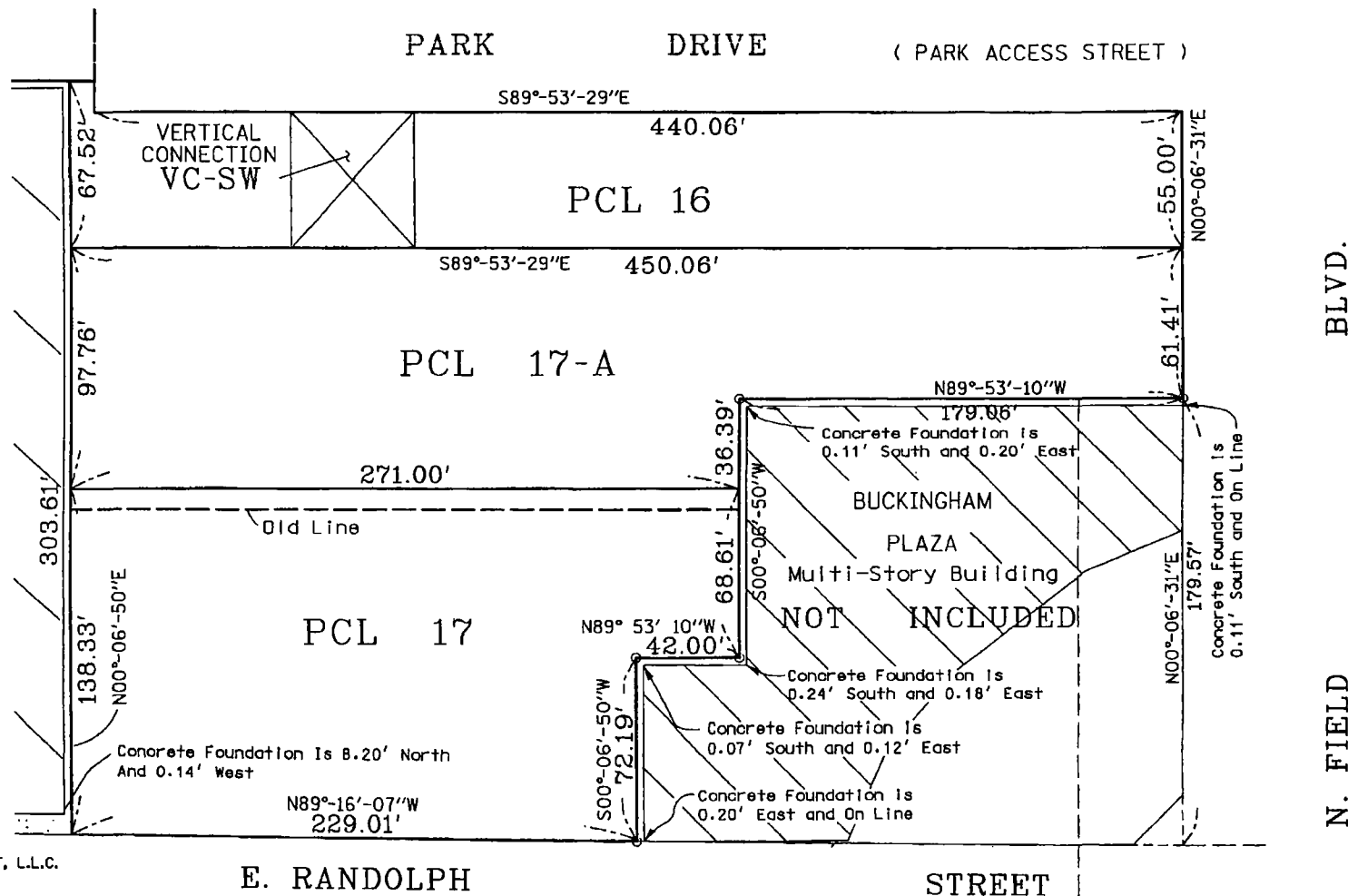
consultants
International Engineering Consultants, Inc.
188 W. Randolph St. Suite 1826
Chicago, Illinois 60601
Tel. (312) 976-9522 / Fax. (312) 920-8970

ELEVATIONS SHOWN HEREON ARE WITH RESPECT TO CHICAGO CITY DATUM (C.C.D.)

LOWER LEVEL
(APPROXIMATELY +8.00 C.C.D.)
SHEET 1 OF 4

EXHIBIT 1.1

SUPPLEMENTAL EXHIBIT SHOWING
REVISED LINE BETWEEN PARCELS 17 AND 17-A



DATE: FEBRUARY 9, 2005
JOB NO. C01026-A
PREPARED FOR: LAKESHORE EAST, L.L.C.
PREPARED BY:

ie
consultants

International Engineering Consultants, Inc.
188 W. Randolph St. Suite 1826
Chicago, Illinois 60601
Tel. (312) 920-9528 / Fax. (312) 920-9570

16

0020732020

4828/0078 90 001 Page 1 of 66

2002-07-02 11:18:08

Cook County Recorder 151.50



EXHIBIT ATTACHED

NWNT N9901678 16930 Jon

DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND
EASEMENTS FOR LAKESHORE EAST

Common Address: 221 Columbus Dr
Chicago, Ill

RECEIVED

MAR 03 2004

Messenger-
KARAGANIS, WHITE & MAGEL LTD.



AlTHEIMER & Gray
10 So Wacker

Suite 3800

Chicago, Ill 60606

Attn: Barry B. Nekritz
66

TABLE OF CONTENTS

20732020

ARTICLE I	DEFINITIONS.....	1
ARTICLE II	TEMPORARY CONSTRUCTION EASEMENT.....	5
2.1	Construction Easement Area.....	5
2.2	Designation of New Temporary Construction Easement Area.....	6
2.3	Coordination	6
ARTICLE III	STREETS AND UTILITIES	6
3.1	General Obligations	6
3.2	Dedication	7
3.3	Upper Level Streets.....	7
3.4	Lower Harbor Drive Easement and Maintenance.....	9
3.5	Lower East South Water Easement and Maintenance	10
3.6	Upper Harbor Drive Connection Area.....	12
3.7	Relocation of Utilities.....	12
3.8	Construction and Maintenance Easements	12
3.9	Pedestrian Bridge.....	12
3.10	Street and Utilities Easement.....	13
ARTICLE IV	PUBLIC ACCESS IMPROVEMENTS: VERTICAL CONNECTIONS AND PEDWAYS	13
4.1	Dedications of and Easements for Public Access Improvements.....	13
4.2	Construction of Public Access Improvements.....	14
4.3	Duration of Obligations	15
4.4	Construction and Maintenance Easements	15
4.5	Maintenance.....	15
ARTICLE V	PARKS / SCHOOL	16
5.1	General Obligations	16
5.2	Dedication	16
5.3	Maintenance Easements.....	16
5.4	Park Easement.....	16
ARTICLE VI	ZONING RIGHTS; COMPLIANCE WITH LAWS; REMOVAL OF LIENS; PLATS OF SUBDIVISION.....	17
6.1	Compliance with PD and Other Laws	17
6.2	PD Requirements and Modifications	17
6.3	Removal of Liens.....	18
6.4	Indemnification.....	18
6.5	Subdivision, Dedication and Vacation.....	19
ARTICLE VII	DESIGN REVIEW	19
7.1	Control of Improvements.....	19
7.2	Submissions to Design Review Committee.....	19
7.3	Time for Review of Parcel Plans and Specifications.....	20

7.4	Time for Review of Revised Parcel Plans and Specifications	20
7.5	Changes in Approved Parcel Plans and Specifications.....	20
7.6	Owner's Rights--Arbitration	21
7.7	Approvals, Fees, Responsibilities	21
7.8	Limitation on Design Review Committee's Powers and Rights	21
ARTICLE VIII	ADMINISTRATION	21
8.1	Administration of Association Elements	21
8.2	Association.....	22
8.3	Voting Rights	22
8.4	Meetings.....	24
8.5	Notices of Meetings	25
8.6	Board of Directors.....	25
8.7	General Powers of the Board	27
8.8	Insurance.....	31
8.9	Liability of the Board of Directors.....	32
8.10	Certain Rights of the Declarant	33
ARTICLE IX	COMMON EXPENSES - MAINTENANCE FUND	33
9.1	Preparation of Estimated Budget	33
9.2	Capital Reserve; Supplemental Budget	34
9.3	Initial Budget	34
9.4	Failure to Prepare Annual Budget.....	35
9.5	Records of the Association	35
9.6	Status of Collected Funds	35
9.7	Non-Use and Abandonment.....	35
ARTICLE X	LIENS, RIGHTS AND REMEDIES	36
10.1	Remedies Not Exclusive	36
10.2	No Set-Off.....	36
10.3	Attorneys' Fees.....	36
10.4	Lien Rights.....	36
10.5	Mortgagee Subrogation.....	36
10.6	Default Interest.....	37
ARTICLE XI	ARBITRATION	37
ARTICLE XII	UNAVOIDABLE DELAYS.....	38
ARTICLE XIII	ESTOPPEL CERTIFICATES	38
ARTICLE XIV	NOTICES.....	39
14.1	Notice Addresses	39
14.2	Delivery of Notice; Change of Address.....	39
ARTICLE XV	TAXES; IMPACT FEE RECAPTURE.....	40
15.1	Open Space	40
15.2	Real Estate Tax Documents	40

15.3	Impact Fees	40
ARTICLE XVI	GENERAL	40
16.1	Mutual Cooperation	40
16.2	Insurance	40
16.3	Construction Standards	41
16.4	Illegality, Invalidity or Unenforceability	41
16.5	Headings	42
16.6	Amendment	42
16.7	Separate Agreements	42
16.8	Abandonment of Easements	42
16.9	Governing Law	43
16.10	No Third Party Beneficiary	43
16.11	Binding Effect and Assignment	43
16.12	Temporary Interference with Use of Easement	43
16.13	Owner's Liability	43
16.14	Limitation of Certain Liability	44
16.15	Ownership by Land Trustee	44
16.16	Rules of Construction	44

TABLE OF DEFINED TERMS

2002 equivalent dollars	36
Affiliate	1
Aggregate CO Parcel Square Footage	22
Ancillary Documents	18
Arbitration Costs	36
Association	1, 21
Association Elements	1
Association Parcels	21
Board	21
City	1
City Areas	42
CO Parcel	22
CO Parcel Percentage	22
CO Parcel Square Footage	22
CO Qualifying Parcel	22
Columbus Drive Pedway	13
Com Ed North Parcel	2
Com Ed Parcel	2
Com Ed South Parcel	2
Common Expenses	2
Control	2
Creditor Owner	2
Declarant	2

Declaration.....	2
Defaulting Owner.....	2
Design Review Committee	18
Determination Date.....	22
Determination Year.....	22
Developing Owner.....	8
Developing Owner's Parcel.....	8
Easement(s).....	2
East Park	4
Effective Date	3
Elevated Sidewalks	4
Emergency Access Easements.....	3
Estoppel Certificate.....	37
Indemnifying Owner.....	17
Indemnatee.....	17
Lakeshore.....	1
Land Parcel Percentage.....	22
Laws.....	3
Lower East South Water	5
Lower East South Water Appurtenant Owners.....	10
Lower East South Water Utility Easement	10
Lower East Street.....	4
Lower Harbor Drive.....	4
Lower Harbor Drive Appurtenant Owners	9
Lower Harbor Drive Utility Easement.....	9
Mortgage.....	3
Neighborhood Park	3
New Temporary Construction Easement Area	5
Non-Performing Party.....	37
Northeast Park.....	4
Open Space Period.....	39
Owner.....	3
Owner's Parcel	3
Parcel.....	3
Parcel Plans and Specifications	19
Park Access Streets	6
Park Drive	6
Parking Decks	7
Parks.....	3
Parks Appurtenant Owners	16
PD	1
Pedestrian Bridge.....	12
Pedways	4
Period A	22
Period B	22
Period C	22

Period D	23
Permittee(s)	3
Person	3
Plans	4
Project Parcel	1
Project Property	4
Proportionate Share	23
Public Access Completion Date	13
Public Access Improvements	4
Real Estate Tax Documents	39
Required Upper Level Streets	8
Reserved Declarant Rights	32
Responsible VC Owner	13
School	4
Separate Agreement	41
Street and Utilities Appurtenant Owners	12
Street Parks	4
Streets	4
Support Columns	7
Supported Vertical Connections	13
Supporting Owners	8
Supporting Owner's Parcels	8
Supporting VC Owner	13
Supporting VC Owner's Parcel	14
Temporary Construction Easement	5
Temporary Construction Easement Area	5
Temporary Upper East Street	4
Unavoidable Delay	37
Upper Harbor Court	5
Upper Harbor Court Owners	5
Upper Harbor Court Private Election	7
Upper Harbor Drive Connection Area	4
Upper Level Streets	7
Utilities	5
Utilities Easements	5
VC Support Columns	13
VC Supporting Columns Completion Date	14
VC Supporting Vertical Improvements	13
VC Underlying Fee Parcels	13
VC-E	4
VC-N13	4
VC-N14	4
VC-N5	4
VC-NW	4
VC-SE	4
VC-SW	4

VC-W	4
Vertical Connections	4
Vertical Improvements	7
Vertical Improvements Completion Date	8
Votes	22
Voting Member	21
West Park	4
West Pedway Owner	13

20732020

**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND
EASEMENTS FOR LAKESHORE EAST**

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR LAKESHORE EAST made as of the 26th day of June 2002, by Lakeshore East LLC, an Illinois limited liability company ("Lakeshore").

R E C I T A L S:

A. Declarant, together with certain other owners who are joining in this Declaration for the purpose of subjecting the property owned by them to this Declaration, hold legal title to various Parcels (as herein defined) of real estate, other than the City Areas.

B. The legal description for the aggregate of the Parcels is included in the property legally described on Exhibit R-1 (such Parcels being herein sometimes collectively called the "Project Parcel").

C. The Project Parcel has been zoned as a Planned Development pursuant to Ordinance No. 70, enacted by the City of Chicago, Illinois on _____, 2002, (said ordinance, as the same may be amended from time to time, being herein called the "PD").

D. Project Owners (as herein defined) intend to construct or cause to be constructed various residential, office, commercial and other improvements that will become part of the Parcels.

E. Declarant desires to declare and establish certain rights and benefits for, and impose certain duties and obligations upon, the present and future Owners (as herein defined) of the Project Property (as herein defined)

NOW, THEREFORE, in consideration of the foregoing and the covenants and agreements of the parties hereto, it is agreed as follows:

ARTICLE I
DEFINITIONS

As used in this Declaration, the following terms shall have the following meanings:

Affiliate: A Person that Controls, is Controlled by, or is under common Control with the Person in question.

Association: The association described in and formed pursuant to this Declaration.

Association Elements: Those improvements that are part of one or more Parcels which this Declaration provides are to be maintained, repaired, replaced, renewed or insured by the Association.

City: The City of Chicago, Illinois.

Com Ed Parcel: A collective term for certain air rights (above the land and building below) that are designated as the Com Ed South Parcel and Com Ed North Parcel on Exhibit 1-1. Each of the Com Ed South Parcel and Com Ed North Parcel is a Parcel as such term is used herein.

Common Expenses: The proposed or actual expenses incurred by the Association in performing its obligations and exercising its rights under this Declaration, including reserves, if any, assessed by the Board, and including the expenses of maintenance, repair, replacement, renewal, insurance, administration and operation of the Association Elements, and payment of such taxes as the Association is required to pay pursuant to this Declaration in connection with the Vertical Connections.

Control: Possession of the authority to direct or cause the direction of the management and policies of the applicable Person, through the direct or indirect ownership of equity interests therein, by contract, voting trust or otherwise. Such term shall include variations thereof.

Creditor Owner: Declarant, the Association, and any Owner to whom a payment of money or other duty or obligation is owed under this Declaration by an Owner who has failed to make such payment or to perform such duty or obligation as and when required hereunder.

Declarant: Lakeshore, and such successors or assigns as it, or its designated successors or assigns, may designate from time to time to be the Declarant hereunder.

Declaration: This Declaration Of Covenants, Conditions, Restrictions And Easements, together with the following exhibits, each of which are attached hereto and made a part hereof:

Exhibit R-1: Legal Description of Project Parcel (Including Com Ed South Parcel and Com Ed North Parcel, but excluding Parcel 1A)

Exhibit 1-1: Drawing of Approximate Parcel Areas, including Com Ed South Parcel, Com Ed North Parcel, excluding Parcel 1A, and including the Plans (Including Streets, e.g., Park Drive, the other Park Access Streets, Temporary Upper East Street, Lower East Street, Upper Level Streets, including the Upper Level Street located on the Com Ed South Parcel, Upper Harbor Court, Upper Harbor Drive Connection Area, Lower Harbor Drive, Lower East South Water, Street Parks, those sidewalks that are to be dedicated adjoining streets, and the Elevated Sidewalks; Utilities Easements; Pedestrian Bridge; Public Access Improvements (including Pedway over Columbus Drive); Neighborhood Park; School)

Exhibit 8.3.1 Land Parcel Percentages

Defaulting Owner: An Owner who has failed to make a payment of money owed under this Declaration to Declarant, the Association, or another Owner, or to perform any of its duties or obligations as and when required under this Declaration.

Easement(s): A collective reference to easements provided for or created under this Declaration.

Effective Date: The date this Declaration is first recorded.

Emergency Access Easements: The portion of the Project Property designated in the PD as emergency access easements that are to be constructed and dedicated or made available to public bodies, together with related improvements thereto designated by Declarant as required by Law, including the PD.

Laws: All federal, state and local laws, statutes, ordinances, codes, rules, regulations, orders, requirements and directives, from time to time in effect, including the City of Chicago Building Code, the Lakefront Ordinance, and the PD.

Mortgage: Any mortgage, or trust deed in the nature of a mortgage, on all or a portion of an Owner's Parcel which has been recorded of record that is not held by an Affiliate of the Owner of the Parcel in question. To the extent applicable, "Mortgage" shall also include a ground lease pursuant to a sale and leaseback transaction and the phrase "holder of the Mortgage" or similar reference shall include the landlord under such ground lease.

Neighborhood Park: The portion of the Project Property designated on the Plans as the central neighborhood park area that is to be constructed and is intended to be dedicated to public bodies, together with related improvements thereto designated by Declarant which shall in all events comply with the requirements of the PD and other applicable Laws.

Owner: A collective term for the Person or Persons whose estates or interests, individually or collectively, aggregate fee simple absolute ownership of a Parcel, including Declarant as to any Parcel owned by Declarant. In any case where such holder is a land trust, Owner shall also include the beneficiary of such trust.

Owner's Parcel: A Parcel owned by the Owner in question.

Parcel: The portions of the Project Parcel, the sizes and dimension of each of which are shown on Exhibit 1-1, including, the Com Ed South Parcel and Com Ed North Parcel, and including, to the extent they become subject to this Declaration as provided herein, City Areas that become part of Parcels, and the legal description of which Parcels may from time to time consistent with such Exhibit be established by Declarant in amendments to this Declaration executed by Declarant, together with the improvements that may be located thereon. It is understood that Streets and Vertical Connections are not intended to be separate Parcels.

Parks: The Neighborhood Park and Street Parks.

Permittee(s): Each Owner, including owners of units in any Parcel that are condominiums, townhomes, or parkhomes, and their respective officers, directors, shareholders, partners, managers, members, employees, agents, contractors, customers, family members, visitors, invitees, licensees, lessees, tenants, subtenants and concessionaires.

Person: A natural person, or any association, firm, corporation, partnership, limited liability company, land trust or any other legal entity, public or private.

Plans: Plans for certain improvements that will be located on the Project Parcel which are set forth, together with the approximate location thereof, on Exhibit 1-1.

Project Property: The Project Parcel, together with all improvements that may be located thereon.

Public Access Improvements: The areas designated on the Plans as stairways and elevators (collectively "Vertical Connections"), and pedways ("Pedways"), which are to be constructed in compliance with Law, including the PD, and certain of which may be dedicated to public bodies, together with related improvements as to the Vertical Connections designated by Declarant, the approximate locations of which are provided for in the PD. The purpose of the Public Access Improvements will be, in the case of the Vertical Connections, to permit public access among the various levels of the Project Property, and in the case of the Pedways, to permit public access to the extent required by the PD and the City through the buildings that are part of the Project Property and to connect to other portions of the downtown pedway system. The Vertical Connections will be located as follows: One on the northerly portion of Parcel 5 ("VC-N5"), one on the southerly portion of Parcel 13 ("VC-N13"), one on the southerly portion of Parcel 14 ("VC-N14"), one on the northerly portion of Parcel 15 ("VC-NW"), one on the westerly portion of Parcel 15 ("VC-W"), one on Parcel 16 ("VC-SW"), one on Parcel 11 ("VC-SE"), and one on Parcel 9 ("VC-E").

School: The portion of Project Property designated on the Plans as a school that is to be constructed and is intended to be dedicated to public bodies, together with related improvements thereto designated by Declarant.

Streets: The portion of Project Property designated on the Plans as (a) streets, (b) sidewalks, including those upper level sidewalks located on the east side of Parcel 1 and the north side of Parcels 13, 14 and 17 (such specified elevated sidewalks collectively the "Elevated Sidewalks"), the upper level sidewalks located on Temporary Upper East Street, Upper Harbor Drive Connection Area, and the Pedestrian Bridge, and the upper level sidewalks adjoining Upper Level Streets, and (c) the three park areas located within such streets, i.e., within (i) Temporary Upper East Street ("East Park"), (ii) the west entry boulevard ("West Park"), and (iii) Upper Harbor Court ("Northeast Park", which together with East Park and West Park are herein referred to as the "Street Parks"), together with related improvements thereto designated by Declarant at the time they are to be constructed, e.g., drainage, lighting, signals, landscaping. The Streets include Park Drive and the other Park Access Streets, the temporary street which will become a permanent walkway area at the upper level of the southern portion of Parcels 9 and 10 ("Temporary Upper East Street"), all Upper Level Streets, including Upper Harbor Court, although Upper Harbor Court may not be dedicated if an Upper Harbor Court Private Election is made, the street and walkway at the lower level of the southern portion of Parcels 9, 10 and 11 ("Lower East Street"), the extension of existing upper Harbor Drive to the north (including any future extension thereof over the easterly portion of Parcel 6 ("Upper Harbor Drive Connection Area") to access any extension of upper Wacker Drive that may be constructed in the future as shown in the PD), the street, although it may not be dedicated, at the lower level of the easterly portion of Parcels 6, 11 and 13 ("Lower Harbor Drive"), the street, although it may not be dedicated, at the lower level of the southerly portion of Parcels 3A and 3D, and the northerly

20732020

portion of Parcel 14 ("Lower East South Water") and the other streets, sidewalks, and the Street Parks shown on the Plans.

Upper Harbor Court: The Upper Level Street designated on the Plan as Upper Harbor Court.

Upper Harbor Court Owners: The Owners of Parcels 7, 8, 9, 10 and 21.

Utilities: The water and sewer utilities that are to be constructed and intended to be dedicated to public bodies, together with related improvements thereto designated by Declarant.

Utilities Easements: The easements for utilities which are to be located in the areas of the Project Parcel for such easements as shown on the Plans and the PD, or as otherwise provided in an amendment to the Declaration in connection with the development of the Project Property or as required by governmental authorities.

ARTICLE II TEMPORARY CONSTRUCTION EASEMENT

2.1 Construction Easement Area. Each Owner hereby grants to the other Owners a temporary non-exclusive easement ("Temporary Construction Easement") for the benefited Owner's Parcel over the area of the granting Owner's Parcel immediately adjoining the boundaries of the benefited Owner's Parcel ("Temporary Construction Easement Area") to the extent reasonably necessary for the sole purpose of any reasonably required access for construction activities as to any improvements that are to be located on, and related construction equipment and forms located on, the benefited Owner's Parcel, which easement shall be exercised to minimize the needed easement area and any burden on the granting Owner's Parcel, and which easement shall in no event include rights for staging and marshalling of construction vehicles, equipment, contractors, subcontractors, materialmen and suppliers on the granting Owner's Parcel. Prior to exercising the right to use such easement the benefited Owner shall give a thirty (30) day advance written notice to the granting Owner designating the Temporary Construction Easement Area. Each such Temporary Construction Easement granted pursuant to this Section shall expire upon substantial completion of the construction of the initial buildings constructed on the benefited Owner's Parcel.

2.2 Designation of New Temporary Construction Easement Area. If a granting Owner of a Temporary Construction Easement shall, from time to time, determine that the Temporary Construction Easement Area that is part of the granted Temporary Construction Easement will within thirty (30) days be required in connection with the development of such granting Owner's Parcel, such granting Owner shall give a thirty (30) day advance written notice to the benefited Owner and will reasonably designate a new Temporary Construction Easement Area on such granting Owner's Parcel, if it can be provided without interfering with such granting Owner's Parcel ("New Temporary Construction Easement Area"), or otherwise terminate such Temporary Construction Easement. Upon the selection of the location of the New Temporary Construction Easement Area, or termination of the Temporary Construction Easement, as applicable, the benefited Owner shall cease to use the Temporary Construction Easement Area within thirty (30) days following the giving of the notice.

2.3 Coordination. Each benefited Owner, as respects its respective construction and use of the Easements granted pursuant to this Article, shall use all reasonable efforts to cause its architects and contractors to cooperate and coordinate its construction with the site or project managers, architects, contractors and construction work of the granting Owner to the extent reasonably practicable to achieve the objectives set forth in this Article. Such Easements may be terminated if such requirements are not satisfied within thirty (30) days after the granting Owner gives written notice of the failure to satisfy to the benefited Owner. The Easements granted pursuant to this Article are in addition to the construction easements granted elsewhere in this Declaration.

ARTICLE III STREETS AND UTILITIES

3.1 General Obligations. Declarant, or its designees, will, except as otherwise provided herein, control construction coordination of all Streets and Vertical Improvements (other than Support Columns), and construction and construction coordination of all Utilities, and the Association will, except as otherwise provided herein, control maintenance, repair, replacement, renewal, and insurance of all Streets, Vertical Improvements (other than Support Columns), and Utilities until such time as they may be dedicated, all in accordance with specifications and standards from time to time established by Declarant or, as to maintenance, repair, replacement, renewal, and insurance, the Association, which shall at a minimum be in compliance with the PD and any other Laws. Owners will be responsible for the construction of, and the costs to so construct, Streets and Vertical Improvements located on their Parcels, all of which shall be constructed in compliance with the PD, other Laws, and any construction, reporting, and other requirements relating to the construction thereof as provided for in agreements with the City in connection therewith, provided such construction and construction costs for the Streets comprised of the ring road surrounding the Neighborhood Park ("Park Drive") and the north and south Field Drive connections to Park Drive (collectively, including Park Drive, the "Park Access Streets") will be the responsibility of and borne by Declarant, and not allocated to the Owners. The Association will, except as otherwise provided herein, be responsible for the costs to maintain, repair, replace, renew, and insure, or cause to be maintained, repaired, replaced, renewed, and insured, the Streets, Vertical Improvements (other than Support Columns), and Utilities until such time as they may be dedicated, or the City may agree to maintain them, so as to keep the same in a clean, sightly, safe and first-class condition consistent with their original appearance and condition, including, but not limited to, the prompt removal of all snow, ice, paper and debris. Real estate taxes and governmental assessments on the Streets shall be paid by the Owner of the Parcels on which the Streets are located until such time as the Streets in question may be dedicated. Notwithstanding the foregoing, Lower Harbor Drive and Lower East South Water will be maintained, repaired, replaced, renewed, and insured by the Parcel Owners on which they are located at their sole cost in accordance with such standards as to such matters, and Upper Harbor Court and Northeast Park will be maintained, repaired, replaced, renewed, and insured by the Upper Harbor Court Owners in accordance with such standards as to such matters in the event of an Upper Harbor Court Private Election.

3.2 Dedication. The Streets, other than Lower Harbor Drive and Lower East South Water, and including the Street Parks, those Emergency Access Easements designated by the PD for public dedication, the Pedestrian Bridge, and the Utilities and Utilities Easements (subject to

20732020

reservation of the right to utilize portions of the area of the Utilities Easements for ingress, egress, parking and support columns for building improvements to be constructed above), shall be dedicated by the Owners of the Parcels on which they are located to such public bodies and at such times as may from time to time be specified and designated by Declarant, and at all times in compliance with, and in no event later than that time required by, the PD and any other Laws, provided an Owner may if permitted by the City dedicate earlier upon completion of the improvements in question. Notwithstanding the foregoing if (a) the Upper Harbor Court Owners agree in writing that Upper Harbor Court and Northeast Park shall not be dedicated to the City, but instead maintained as a private street and park, (b) such election is permitted by Law, including the PD, and agreed to by the City, and (c) the Upper Harbor Court Owners enter into a recorded declaration binding on all Parcels owned by them whereby they will be solely responsible at their sole cost to maintain, repair, replace, renew, and insure Upper Harbor Court and Northeast Park and providing for agreed upon access rights by the parties thereto in connection therewith ("Upper Harbor Court Private Election"), then Upper Harbor Court and Northeast Park need not be so dedicated.

3.3 Upper Level Streets. As to upper level Streets as shown on the Plans, which includes Temporary Upper East Street, the Elevated Sidewalks, and the Street Parks (such Streets, including the surface and upper decks on which they are constructed, "Upper Level Streets"), some or all of which may be built on top of multiple levels of parking decks ("Parking Decks") located on various Owner's Parcels, the following additional provisions shall apply:

(a) Easements will be granted or dedicated by the Owners as to their Parcels, and at their cost, to permit the placement, construction and maintenance of support columns and structures ("Support Columns"), drainage and utility lines, and other related utility improvements servicing the Upper Level Streets (collectively, including the Support Columns, the "Vertical Improvements") to such public bodies, in such form, in such locations, and at such times, as may from time to time be reasonably specified and designated by Declarant in connection with placement, construction and maintenance, and at all times in compliance with, and in no event later than that time required by, the PD and any other Laws. All of the Support Columns shall be maintained, repaired, replaced, renewed, and insured by the Owner of the Parcel on which they are located at its sole cost except to the extent, if any, that the City agrees to be responsible therefor. To the extent permitted by the PD and any other Laws, the Support Columns for the Upper Level Streets will be owned by the Owner of the Parcel, which Support Columns may in some or all cases be used by Owners as part of the supports for their Parking Decks or other improvements. As part of the easement grant or dedication, as applicable, relating to the Vertical Improvements, future maintenance obligations and costs as to the Support Columns and as to maintaining a watertight surface and drainage facilities on the Upper Level Street to prevent water penetration into the areas below, will be allocated between the City, which will upon dedication own and maintain the Upper Level Street above, and the Owner of the Parcel on which the improvements are located, it being understood that the City may not commit to pay any such costs.

(b) Each Parcel Owner will at its cost build and complete on its Parcel the Upper Level Streets and Vertical Improvements that will support and service the Upper Level Street above (which Vertical Improvements, if desired by such Owner, may be incorporated in the Parking Decks located below the Upper Level Street in question), at such time and in such

manner as required in this Section, and in no event later than the time required by the PD or any other Laws. If another Owner ("Developing Owner") is prepared to develop building improvements on its Parcel ("Developing Owner's Parcel") prior to construction by one or more other Owners ("Supporting Owners") on their Parcels ("Supporting Owner's Parcels"), of the Vertical Improvements that are needed to complete the Upper Level Streets needed for access as shown on the Plans from the Developing Owner's Parcel to then existing and completed public streets ("Required Upper Level Streets") (including the Temporary Upper East Street that may be needed by Parcel 9 to access Harbor Drive from the southern portion of Parcel 9), the Supporting Owners (other than Supporting Owner's that own Parcels 1, 2, 3, 3A, 3B, or the Com Ed Parcel as to which the timing will be provided for in a Separate Agreement) shall commence and diligently proceed with the construction of the Required Upper Level Streets and Vertical Improvements on the Supporting Owner's Parcels so that they are completed no later than the Vertical Improvements Completion Date, as herein defined, even though the Supporting Owners may not intend to construct buildings on one or more of the Supporting Owner's Parcels until a later date. As used herein the "Vertical Improvements Completion Date" means the date set forth in a notice to the Supporting Owner in question from Declarant, which specified date shall not be earlier than three hundred sixty-five (365) days after the effective date of such notice. Upon written request from a Developing Owner specifying the desired Vertical Improvements Completion Date, Declarant shall within fifteen (15) days send such notice to the Supporting Owners in question if Declarant determines in good faith that the requesting Developing Owner has, or is likely to obtain, the required approvals and the financial resources to commence the construction of the proposed building on the Developing Owner's Parcel and complete such construction by dates that are consistent with the Vertical Improvements Completion Date requested by the Developing Owner, provided such conditions may conclusively be presumed to be satisfied if the construction of the proposed building has commenced and is in progress. The Developing Owner shall provide to Declarant such information as Declarant requests in good faith to make such determination. If any Supporting Owner defaults in its obligation to commence, diligently proceed with, and complete the construction of the Required Upper Level Streets and Vertical Improvements on its Supporting Owner's Parcel as required herein, and such default continues for thirty (30) days after notice from Declarant or the affected Developing Owner, Declarant, or if Declarant elects (which election by Declarant to take such action itself or permit a Developing Owner to do so shall be made no later than thirty (30) days after any request by a Developing Owner to make such election), the affected Developing Owner, will have the right to do so and the defaulting Supporting Owner will reimburse them from time to time within ten (10) days after demand for all costs incurred by it to complete the Required Upper Level Streets and Vertical Improvements on the Supporting Owner's Parcel in question. In such a case, if the curing party elects, only Support Columns sufficient to support the Upper Level Street above need be constructed on the Supporting Owner's Parcel in question, i.e., the curing party need not construct the Parking Decks on the Supporting Owner's Parcel in question, or Support Columns designed for, or sufficient to support, such Parking Decks. The curing party shall have the benefit of the temporary construction easements provided in this Article to complete such work. If the Declarant permits the Developing Owner to be the curing party, and the Supporting Owner does not reimburse the Developing Owner for such costs to cure as provided herein, the Declarant or Association shall upon the request of the Developing Owner pursue, or permit the Developing Owner to pursue, the lien rights against the Supporting Owner's Parcel that are provided for herein in order to collect the amount owed to the Developing Owner, provided the

Developing Owner pays the costs of such collection and lien enforcement proceedings, which obligation is not intended to relieve the obligation of the Supporting Owner to pay such costs as a Defaulting Owner.

3.4 Lower Harbor Drive Easement and Maintenance. As to Lower Harbor Drive, which will not be dedicated as a street but will be located on a Utilities Easement that is intended to be dedicated to the City ("Lower Harbor Drive Utility Easement"), the following additional provisions shall apply:

(a) The Owners of each of the Parcels on which Lower Harbor Drive is located hereby grants to each of the other Owners of Parcels on which Lower Harbor Drive is located and Owners of other Parcels, including Parcels 7, 10, 12 and 21, that adjoin or have access to Lower Harbor Drive (collectively "Lower Harbor Drive Appurtenant Owners") for their use and enjoyment, and the use and enjoyment of the Lower Harbor Drive Appurtenant Owners' Permittees, a perpetual non-exclusive easement on, over, through and across Lower Harbor Drive for the purposes of pedestrian and vehicular ingress and egress, including ingress and egress to and from the Lower Harbor Drive Appurtenant Owners' respective Parcels, the lower level of Harbor Drive, and, if opened at that level for access, lower Wacker Drive. The top of such easement area shall be located not lower than +20 CCD. It is understood that the Owners of the Parcels on which Lower Harbor Drive is located will be permitted to maintain private parking, for the exclusive benefit of their Parcels, on the east and west sides of Lower Harbor Drive, subject to the rights of the City pursuant to the Lower Harbor Drive Utility Easement, provided the ingress and egress easement shall include (a) unobstructed driving lanes not less than twenty (20) feet in aggregate combined width which shall be maintained at all times in the center of Lower Harbor Drive, and (b) a reasonable number of pedestrian and vehicular entrances and exits from the Lower Harbor Drive Appurtenant Owners' Parcels to Lower Harbor Drive, which reasonable number will not be less than that required by good traffic design and the City, and shall be determined with respect to each Lower Harbor Drive Appurtenant Owner's Parcel, and not in the aggregate, and provided no parking will be permitted in front thereof. Unless the Association otherwise determines, garage doors with electric openers will be installed at the locations where Lower Harbor Drive intersects with public streets by the Owners of the Parcels where such intersections occur, and during such times as more than one Lower Harbor Drive Appurtenant Owner is utilizing Lower Harbor Drive for ingress and egress as provided herein, the Association shall maintain, repair, replace and renew such doors and openers, and issue control cards or other devices to control such doors in accordance with reasonable non-discriminatory rules and regulations it may adopt, which shall in no event prevent the Lower Harbor Drive Appurtenant Owners' Permittees from exercising there easement rights provided herein or impose an access fee for access to Lower Harbor Drive, other than for the cost of providing the control cards or devices.

(b) Each Owner of a Parcel on which Lower Harbor Drive is located agrees that it shall at all times maintain, repair, replace and renew, or cause to be maintained, repaired, replaced or renewed, the portion of the Lower Harbor Drive located on its Parcel so as to keep the same in a clean, sightly, safe and first-class condition consistent with its original appearance and condition, including, but not limited to, the prompt removal of all snow, ice, paper, and debris from the portion of the Lower Harbor Drive located on its Parcel. If any such Owner fails to do so another Lower Harbor Drive Appurtenant Owner who utilizes Lower Harbor Drive shall

be a Creditor Owner in connection therewith with the rights provided herein. Notwithstanding the foregoing, if a Lower Harbor Drive Appurtenant Owner desires to pave the Lower Harbor Drive driving lane and entrances and exits to its Parcel in order to exercise its easement rights hereunder before the Owner of the Parcel on which such portion of Lower Harbor Drive is located does so, it may do so to the level of improvement that it desires and at its cost, and shall be responsible for the maintenance, repair, replacement and renewal thereof until the Owner of the Parcel on which such portion of Lower Harbor Drive is located begins development of its Parcel.

(c) No Owner of a Parcel on which Lower Harbor Drive is located shall have any obligations under this Section 3.4 or elsewhere in this Declaration as to Lower Harbor Drive to the extent it does not have an ownership interest therein that is needed to perform such obligations, unless and until such Owner obtains fee ownership interest in such portions of Lower Harbor Drive which permits such Owner to perform such obligations set forth in this Section 3.4 or elsewhere in this Declaration relating to Lower Harbor Drive.

3.5 Lower East South Water Easement and Maintenance. As to Lower East South Water, which will not be dedicated as a street but will be located on a Utilities Easement that is intended to be dedicated to the City ("Lower East South Water Utility Easement"), the following additional provisions shall apply:

(a) The Owners of each of the Parcels on which Lower East South Water is located hereby grants to each of the other Owners of Parcels on which Lower East South Water is located and the Owners of other Parcels, including Parcels 3, 3B, 3C, 4, 5, 15 and 22, that adjoin or have access to Lower East South Water (collectively "Lower East South Water Appurtenant Owners") for their use and enjoyment, and the use and enjoyment of the Lower East South Water Appurtenant Owners' Permittees, a perpetual non-exclusive easement on, over, through and across Lower East South Water for the purposes of pedestrian and vehicular ingress and egress, including ingress and egress to and from the Lower East South Water Appurtenant Owners' respective Parcels, the lower level of East South Water Street, and when opened at that level, Field Drive. The top of such easement area shall be located not lower than +20 CCD. It is understood that the Owners of the Parcels on which Lower East South Water is located will be permitted to maintain private parking, for the exclusive benefit of their Parcels, on the north and south sides of Lower East South Water, subject to the rights of the City pursuant to the Lower East South Water Utility Easement, provided the ingress and egress easement shall include (a) unobstructed driving lanes not less than twenty (20) feet in aggregate combined width which shall be maintained at all times in the center of Lower East South Water, and (b) a reasonable number of pedestrian and vehicular entrances and exits from the Lower East South Water Appurtenant Owners' Parcels to Lower East South Water Street, which reasonable number will not be less than that required by good traffic design and the City, and shall be determined with respect to each Lower East South Water Appurtenant Owner's Parcel, and not in the aggregate, and provided no parking will be permitted in front thereof. Unless the Association otherwise determines, garage doors with electric openers will be installed at the locations where Lower East South Water intersects with public streets by the Owners of the Parcels where such intersections occur, and during such times as more than one Lower East South Water Appurtenant Owner is utilizing Lower East South Water for ingress and egress as provided herein, the Association shall maintain, repair, replace and renew such doors and openers, and

issue control cards or other devices to control such doors in accordance with reasonable non-discriminatory rules and regulations it may adopt, which shall in no event prevent the Lower East South Water Appurtenant Owners' Permittees from exercising their easement rights provided herein or impose an access fee for access to Lower East South Water, other than for the cost of providing the control cards or devices.

(b) Each Owner of a Parcel on which Lower East South Water is located agrees that it shall at all times maintain, repair, replace and renew, or cause to be maintained, repaired, replaced or renewed, the portion of the Lower East South Water located on its Parcel so as to keep the same in a clean, sightly, safe and first-class condition consistent with its original appearance and condition, including, but not limited to, the prompt removal of all snow, ice, paper, and debris from the portion of the Lower East South Water located on its Parcel. If any such Owner fails to do so another Lower East South Water Appurtenant Owner who utilizes Lower East South Water shall be a Creditor Owner in connection therewith with the rights provided herein. Notwithstanding the foregoing, if a Lower East South Water Appurtenant Owner desires to pave the Lower East South Water driving lane and entrances and exits to its Parcel in order to exercise its easement rights hereunder before the Owner of the Parcel on which such portion of Lower East South Water is located does so, it may do so to the level of improvement that it desires and at its cost, and shall be responsible for the maintenance, repair, replacement and renewal thereof until the Owner of the Parcel on which such portion of Lower East South Water is located begins development of its Parcel.

(c) No Owner of a Parcel on which Lower East South Water is located shall have any obligations under this Section 3.5 or elsewhere in this Declaration as to Lower East South Water to the extent it does not have an ownership interest therein that is needed to perform such obligations, unless and until such Owner obtains fee ownership interest in such portions of Lower East South Water which permits such Owner to perform such obligations set forth in this Section 3.5 or elsewhere in this Declaration relating to Lower East South Water.

3.6 Upper Harbor Drive Connection Area. The Upper Harbor Drive Connection Area in the location required by the PD will at all times be maintained by the Owner of the Parcel on which it is located as open landscaped space and sidewalks, and in all events in compliance with the PD and any other Laws, until such time, if any, as the City may require a street to be constructed thereon as a connection to upper Wacker Drive if it is extended, at which time such street will be constructed by the Owner of the Parcel on which it is located at its sole cost. Such Parcel Owner agrees that it shall at all times maintain, repair, replace and renew, or cause to be maintained, repaired, replaced or renewed, the Upper Harbor Drive Connection Area so as to keep the same in a clean, sightly, safe and first-class condition consistent with its original appearance and condition, including, but not limited to, the prompt removal of all paper and debris.

3.7 Relocation of Utilities. Declarant at its expense reserves the right, but shall have no obligation, to relocate with current standard materials into the location of the Utilities Easements any now existing utility lines that may be located on Parcels outside of such easement areas, provided such relocation shall be done in a manner to avoid any unnecessary interruption of service, and shall provide for restoration of the land and other improvements disturbed by such relocation.

3.8 Construction and Maintenance Easements. Each Owner hereby grants to the Declarant, the Association, and their designees for the construction, maintenance, repair, replacement and renewal of the improvements contemplated by this Article, a non-exclusive easement over the granting Owner's Parcels for ingress and egress for Persons, vehicles and materials on, over, across and through the granting Owner's Parcel, and in connection with the initial construction of improvements for the purpose of staging and marshalling of construction vehicles, equipment, contractors, subcontractors, materialmen and suppliers in connection therewith, provided the easement rights for maintenance, repair, replacement and renewal shall be exercised so as not to unreasonably interfere with an Owner's use of, and access to, its Parcel except in emergency situations.

3.9 Pedestrian Bridge. As to the pedestrian bridge over the north portion of Field Drive as shown on the Plans ("Pedestrian Bridge"), the following additional provisions shall apply.

(a) The Pedestrian Bridge will be constructed by the Owners of Parcels 13 and 14 at their cost (which cost shall be equally divided by such Owners) at such time and in accordance with specifications and standards from time to time established by Declarant, and in all events in compliance with the PD and any other Laws. The Owners of such Parcels shall cooperate in such activities.

(b) The Association shall at all times at its cost maintain, repair, replace, renew, and insure the Pedestrian Bridge until such time, if any, as it may be dedicated, or the City may agree to maintain it, so as to keep the same in a clean, sightly, safe and first-class condition consistent with its original appearance and condition, including, but not limited to, the prompt removal of snow, ice, paper and debris.

3.10 Street and Utilities Easement. The Owners of each of the Parcels on which there are to be located Streets and Utilities Easements hereby grants, until such time, if any, as the Streets and Utilities Easements in question may be dedicated for public use, to each of the other Owners of Parcels (collectively "Street and Utilities Appurtenant Owners") for their use and enjoyment, and the use and enjoyment of the general public and the Street and Utilities Appurtenant Owners' Permittees, a non-exclusive easement (a) on, over, through and across the Streets for the purposes of pedestrian and vehicular ingress and egress, except for Upper Harbor Court if an Upper Harbor Court Private Election occurs, subject to such reasonable non-discriminatory rules and regulations as may be established by the Association, and (b) to utilize, at the Street and Utilities Appurtenant Owners' cost, the Utilities and Utilities Easements.

ARTICLE IV

PUBLIC ACCESS IMPROVEMENTS: VERTICAL CONNECTIONS AND PEDWAYS

4.1 Dedications of and Easements for Public Access Improvements. Easements will be granted or dedicated, or if requested by the City fee interests conveyed or dedicated, by the Owners as to their Parcels, and at their cost, to permit the placement, construction, operation and maintenance of the Vertical Connections, to such public bodies (or their designees), in such form, in such locations, and at such times, as may from time to time be required by the PD, any other Laws, and the City. If Owners of Parcels on which Vertical Connections are to be located

so elect ("Supported Vertical Connections"), however, such Owners (each a "Supporting VC Owner") may retain fee ownership and the right to utilize the area below the lower level of such Vertical Connections ("VC Underlying Fee Parcels") for their own uses, e.g., parking garages, equipment or storage facilities, and shall in all events have the right to utilize adjoining areas owned by them. In the case of Supported Vertical Connections, easements will also be granted or dedicated by the Supporting VC Owners as to their VC Underlying Fee Parcels, at their cost, to permit the placement, construction and maintenance of support columns and structures ("VC Support Columns"), utility lines, and other related utility improvements for the Supported Vertical Connections (the portions thereof located in the Underlying Fee Parcels collectively, including the VC Support Columns, referred to herein as the "VC Supporting Vertical Improvements") to such public bodies (or their designees), in such form, in such locations, and at such times, as may from time to time be specified and designated by the City pursuant to the PD and any other Laws. Declarant may exercise its rights pursuant to Section 6.5 if such easements or dedications are not granted as required herein. To the extent permitted by the PD and any other Laws, the VC Support Columns for the Supported Vertical Connections will be owned by the Supporting VC Owner of the Parcel, which supports may in some or all cases be used by the Supporting VC Owners as part of the supports for their buildings. As part of the easement grant or dedication, as applicable, relating to the VC Supporting Vertical Improvements, future maintenance obligations and costs as to the VC Support Columns will, to the extent not otherwise provided herein, be allocated between the party maintaining the Supported Vertical Connections above, and the Supporting VC Owner of the VC Underlying Fee Parcel on which the improvements are located, it being understood that the City may not commit to pay any such costs. Public access through the Vertical Connections and Pedways will at all times be permitted in such form, in such locations, and at such times, as may from time to time be required by the PD any other Laws.

4.2 Construction of Public Access Improvements. Each Parcel Owner on which a Public Access Improvement is to be located (and in the case of the portion of the Pedway that is to be located over Columbus Drive ("Columbus Drive Pedway"), the Owner of the Com Ed South Parcel) will be obligated at its cost to build and complete on its Parcel (and in the case of the Owner of the Com Ed South Parcel, also the Columbus Drive Pedway) the Public Access Improvements at such time and in such manner as required by the City pursuant to the PD and any other Laws in connection with the development of the Project Property ("Public Access Completion Date"), provided that in respect of the Columbus Drive Pedway (a) the Owner of the Com Ed South Parcel will upon its construction of the Columbus Drive Pedway be entitled to receive contributions, if any, to the cost thereof to be made by the owner of the connecting property to the Columbus Drive Pedway at the west end thereof ("West Pedway Owner"), (b) the Columbus Drive Pedway and connections thereto over the Com Ed Parcel and Parcels 1 and 2 shall be built and completed not later than the date the improvements above the upper level of both Parcels 1 and 2 have been constructed, and (c) in no event shall the Columbus Drive Pedway be required to be constructed until any required authorizations from the West Pedway Owner to connect to its building are obtained or mandated by the City. Notwithstanding the foregoing, it shall be the responsibility of the Owner of Parcel 4 to construct VC-NW, the Owner of Parcel 3 to construct VC-W, and the Owner of Parcel 17 to construct VC-SW (such owners as to each of their respective Vertical Connections is herein referred to as the "Responsible VC Owner"), together with any related VC Supporting Vertical Improvements (other than any VC Support Columns which will be constructed by the Supporting VC Owner as provided herein). If

a Responsible VC Owner is required to develop the Vertical Connection for which it is responsible prior to construction by the Supporting VC Owner of any VC Underlying Fee Parcel on which a Supported Vertical Connection is to be located ("Supporting VC Owner's Parcel") of VC Support Columns that are needed to complete the Supported Vertical Connection in question, the Supporting VC Owner shall commence and diligently proceed with the construction of the VC Support Columns on the Supporting VC Owner's Parcel so that they are completed no later than the VC Supporting Columns Completion Date, as herein defined, and so that the required Supported Vertical Connection can be constructed above, even though the Supporting VC Owner may not intend to construct buildings on its Supporting VC Owner's Parcel until a later date. As used herein the "VC Supporting Columns Completion Date" means the date set forth in a notice to the Supporting Owner in question from the Responsible VC Owner, which specified date shall not be earlier than three hundred sixty-five (365) days after the effective date of such notice, and which date shall be reasonably determined by the Responsible VC Owner so as to permit it to complete construction of the Supported Vertical Connection for which it is responsible by the Public Access Completion Date for such Supported Vertical Connection. If any responsible Owner fails to commence, diligently proceed with, and complete the construction of a Vertical Connection for which it is responsible, or if a Supporting VC Owner defaults in its obligation to commence, diligently proceed with, and complete the construction of the VC Support Columns on its Supporting VC Owner's Parcel as required herein, and such default continues for thirty (30) days after notice from the Declarant or an affected Responsible VC Owner, Declarant, or if Declarant elects, the affected Responsible VC Owner, will have the right to do so and be reimbursed from time to time within ten (10) days after demand by the defaulting Owner for all costs incurred by it to complete the Vertical Connection or VC Support Columns for which it was responsible. In such a case, if the curing party elects, only VC Support Columns sufficient to support the Vertical Connection above need be constructed on the VC Underlying Fee Parcel in question, e.g., the curing party need not construct any parking areas to service the Supporting VC Owner's Parcel in question.

4.3 Duration of Obligations. The Public Access Improvements must be maintained in existence to the extent, and for such periods, as required by the City pursuant to the PD and other applicable Laws from time to time.

4.4 Construction and Maintenance Easements. Each Owner grants to the Responsible VC Owner that is to build the Vertical Connection on such Owner's Parcel, the Declarant, the Association, and their designees for the construction, maintenance, repair, replacement and renewal of the Vertical Connections and VC Supporting Vertical Improvements contemplated by this Article, a non-exclusive easement over the granting Owner's Parcel for ingress and egress for Persons, vehicles and materials on, over, across and through the granting Owner's Parcel, and in connection with the initial construction of improvements for the purpose of staging and marshalling of construction vehicles, equipment, contractors, subcontractors, materialmen and suppliers in connection therewith, provided the easement rights for maintenance, repair, replacement and renewal shall be exercised so as not to unreasonably interfere with an Owner's use of, and access to, its Parcel except in emergency situations.

4.5 Maintenance. Each Owner of a Parcel on which a Pedway is located, and the Owner of the Corn Ed South Parcel in respect of the Columbus Drive Pedway, agrees that it shall at all times maintain, repair, replace, renew, and insure, or cause to be maintained, repaired,

replaced, renewed, and insured, their applicable Pedway so as to keep the same in a clean, sightly, safe and first-class condition consistent with its original appearance and condition, including, but not limited to, the prompt removal of all paper and debris. The Association shall at all times at its cost maintain, repair, replace, renew, and insure, or cause to be maintained, repaired, replaced, renewed, and insured, the Vertical Connections and the VC Supporting Vertical Improvements until such time, if any, as they may be dedicated, or the City may agree to maintain them, so as to keep the same in a clean, sightly, safe and first-class condition consistent with their original appearance and condition, including, but not limited to, the prompt removal of all snow, ice, paper, and debris, provided notwithstanding the foregoing each Supporting VC Owner will so maintain, repair, replace, renew, and insure the VC Support Columns located on their Parcel except to the extent, if any, that the City agrees to be responsible therefor. In addition, if the Owner of a Parcel on which a Vertical Connection is located causes such Vertical Connection to be divided into a separate real estate tax parcel, the Association shall thereafter pay before due all real estate taxes and governmental assessments attributable to such tax parcels that are comprised exclusively of the Vertical Connections, and shall have the sole right to contest and such taxes, assessments, and related assessed valuations.

ARTICLE V PARKS / SCHOOL

5.1 General Obligations. Declarant, or its designees, will at its cost construct, cause to be constructed, or if acceptable to the City provide funds for construction of, the Neighborhood Park and School in accordance with specifications and standards from time to time established by Declarant, and in all events in compliance with the PD and any other Laws. The Association shall at all times at its cost maintain, repair, replace, renew, and insure, or cause to be maintained, repaired, replaced, renewed, and insured, the Parks (except for (a) Northeast Park if an Upper Level Harbor Court Election occurs, and (b) after the School is constructed, the School and land on which the School is located) until such time, if any, as the City may agree to maintain them (whether or not dedicated), so as to keep the same in a clean, sightly, safe and first-class condition consistent with their original appearance and condition, including, but not limited to, the prompt removal of all paper, and debris.

5.2 Dedication. The Neighborhood Park and School shall be dedicated by the Owners of the Parcels on which they are located, and easements required in connection therewith granted, at their cost to such public bodies, or their designees, in such form, and at such times, as may from time to time be specified and designated by Declarant, and at all times in compliance with, and in no event later than that time required by, the PD and any other Laws, provided an Owner may if permitted by the City dedicate earlier upon completion of the improvements in question.

5.3 Maintenance Easements. Each Owner grants to the Declarant, the Association, and their designees for the construction, maintenance, repair, replacement and renewal of the Parks and School contemplated by this Article, a non-exclusive easement over the granting Owner's Parcel on which the Parks are, or are to be, located, except for Northeast Park if an Upper Harbor Court Private Election occurs, for ingress and egress for Persons, vehicles and materials on, over, across and through such portion of the granting Owner's Parcel, and in connection with the initial construction of improvements for the purpose of staging and

marshalling of maintenance vehicles, equipment, contractors, subcontractors, materialmen and suppliers in connection therewith, provided the easement rights for maintenance, repair, replacement and renewal shall be exercised so as not to unreasonably interfere with an Owner's use of, and access to, its Parcel except in emergency situations.

5.4 Park Easement. The Owners of each of the Parcels on which Parks are located hereby grants, until such time, if any as such Parks in question are dedicated, to each of the other Owners of Parcels (collectively "Parks Appurtenant Owners") for their use and enjoyment, and the use and enjoyment of the general public, the City of Chicago, the Chicago Park District, and the Parks Appurtenant Owners' Permittees, a non-exclusive easement on, over, through and across the Parks, except for Northeast Park if an Upper Harbor Court Private Election occurs, for the purposes of pedestrian and park use, subject to such reasonable non-discriminatory rules and regulations as may be established by the Association.

ARTICLE VI ZONING RIGHTS; COMPLIANCE WITH LAWS; REMOVAL OF LIENS; PLATS OF SUBDIVISION

6.1 Compliance with PD and Other Laws. The Association, Declarant and each Owner with respect to its Parcel, or any part thereof, and its obligations hereunder shall comply with the PD and all other Laws if noncompliance with the PD or other Laws would (a) subject any other Owner to civil or criminal liability, or other liability under the PD, (b) jeopardize such other Owner's right to occupy or utilize beneficially its Parcel or any part thereof, (c) result in the imposition of a lien against any of the property of any other Owner, or (d) impair the ability of any other Owner to use and enjoy any of the Easements. It is understood and agreed that this provision is not intended to impose a duty on the Association, Declarant or an Owner to take actions that the City agrees are not needed to so comply. If at any time any Owner so obligated to comply with the provisions of this Section shall not proceed diligently with any such compliance and such failure to proceed shall adversely and materially affect any other Owner, then the Creditor Owner may give written notice to the Defaulting Owner specifying the respect or respects in which the cure of such non-compliance is not proceeding diligently and, if upon expiration of ten (10) days after the receipt of such notice, any such cure of the non-compliance is still not proceeding diligently, then the Creditor Owner may cause such compliance to occur by taking all appropriate steps to carry out the same. The Creditor Owner shall be entitled to reimbursement upon demand from the Defaulting Owner for all costs and expenses incurred by the Creditor Owner in connection with causing any such compliance to occur.

6.2 PD Requirements and Modifications. In addition to the other provisions of this Article, no Owner, including Declarant, shall allow any use of its Parcel, or take or fail to take any action in respect of its Parcel, which would violate the provisions of the PD. Each Owner: (a) agrees to comply with the terms and provisions of this Declaration in connection with its Parcel, and all easements granted or to be granted pursuant to this Declaration or the PD in connection with its Parcel, (b) shall perform such acts as may be required under the PD related solely to its Parcel, (c) shall grant or cause to be granted such easements as may be required by the terms of this Declaration or the PD, and (d) shall not take any action which would adversely affect any other Person's use and enjoyment of the easements granted pursuant to this Declaration or the PD. No Parcel Owner, including Declarant, shall amend or modify the terms

and provisions of the PD if such amendment or modification would adversely affect another Owner's Parcel without the consent of such other Owner, and, other than pursuant to a minor change letter, no Parcel Owner, except Declarant, shall seek to amend or modify the terms and conditions of the PD prior to the earlier of (a) completion of construction of all of the initial buildings on all Parcels, and (b) twenty (20) years after the Effective Date. Declarant will have the sole right, acting alone, to modify parcels and subparcels provided for in the PD, and allocate and reallocate development and other rights pursuant to the PD and among those parcels and subparcels, subject only to restrictions, if any, on Declarant's ability to exercise such rights in respect of a Parcel as may be set forth in a Separate Agreement with the Owner of that Parcel, and provided that Declarant shall not decrease development and other rights in respect of a Parcel without the consent of the Owner of that Parcel and the consent of the holder of any Mortgage on that Parcel. Information as to any such reallocation that is different from any allocations provided for in the PD shall be made available to all Owners. The Parcels constituting the Project Parcel shall continue to be combined and treated as one subarea for the purposes of complying with the PD.

6.3 Removal of Liens. Each Owner shall remove, within thirty (30) days after the filing thereof, any mechanics', materialmen's or any other similar lien on the other Owner's Parcel, or on its Parcel if the existence or foreclosure of such lien on its Parcel would adversely affect any right of another Owner hereunder, arising by reason of its act or any work or materials which it has, or has caused to be, ordered. In the event the Defaulting Owner fails to remove any such lien within such thirty (30) day period, the Creditor Owner may take such action as the Creditor Owner may deem necessary to remove such lien. The Creditor Owner shall be entitled to reimbursement from the Defaulting Owner for all costs and expenses incurred by the Creditor Owner in removing or attempting to remove such lien. However, the Defaulting Owner shall not be required to remove such lien within thirty (30) days after the filing thereof if the foreclosure of such lien cannot be completed within said thirty (30) day period and the Defaulting Owner (a) shall in good faith diligently proceed to contest the same by appropriate proceedings and shall give written notice to the Creditor Owner of its intention to contest the validity or amount of such lien, and (b) shall deliver to the Creditor Owner either: (i) cash or a surety bond from a responsible surety company acceptable to the Creditor Owner (or to the holder of any Mortgage encumbering Creditor Owner's Parcel, if required by the terms of such Mortgage) in an amount equal to one hundred fifty percent (150%) of the lien claim and all interest and penalties then accrued thereon or such greater amount as may reasonably be required to assure payment in full of the amount claimed plus all penalties, interest and costs which may thereafter accrue by reason of such lien claim, or (ii) other security or title insurance reasonably acceptable to the Creditor Owner (and to the holder of any Mortgage encumbering Creditor Owner's Parcel, if required by the terms of such Mortgage).

6.4 Indemnification. Each Owner ("Indemnifying Owner") covenants and agrees, at its sole cost and expense, to indemnify and hold harmless the other Owner ("Indemnitee") from and against any and all claims against the Indemnitee for losses, liabilities, damages, judgments, costs and expenses and any actions or proceedings arising therefrom, by or on behalf of any Person, other than the Indemnitee, arising from the Indemnifying Owner's use, possession or management of the Indemnifying Owner's Parcel or activities thereon, or arising out of the Indemnifying Owner's or any Indemnifying Owner's Permittees' use, exercise or enjoyment of an Easement or activities on another Owner's Parcel required by this Declaration, and from and

against all costs, attorneys' fees, expenses and liabilities incurred with respect to any such claim, action or proceeding arising therefrom. In case any action or proceeding is brought against the Indemnatee by reason of any such claim, the Indemnifying Owner, upon notice from the Indemnatee and at the Indemnifying Owner's sole cost and expense, covenants to resist or defend such action or proceeding with attorneys reasonably satisfactory to the Indemnatee. Provided that such a waiver does not invalidate any applicable insurance policy or policies or diminish or impair the insured's ability to collect under such policy or policies or unreasonably increase the premiums for such policy or policies unless the party to be benefited by such waiver pays such increase, and without limiting any release or waiver of liability or recovery contained elsewhere in this Declaration, the Indemnatee hereby waives all claims for recovery from the Indemnifying Owner for any loss or damage for which it is insured under valid and collectible insurance policies to the extent of any recovery collectible under such insurance policies.

6.5 Subdivision, Dedication and Vacation. Each Parcel Owner hereby grants to Declarant an irrevocable power of attorney coupled with an interest to act on such Owner's behalf to execute all plats of subdivision, grants of vacation, grants of dedication, and easements but only to the extent that they may be required by or desirable in Declarant's judgment to effectuate the requirements of the PD or this Declaration, or to effectuate the subdivision of the Parcels or vacation of existing easements and dedications affecting such Parcels (collectively "Ancillary Documents"). In addition thereto, each Parcel Owner will execute and deliver to Declarant within twenty (20) days after request by Declarant any such Ancillary Documents which shall, to the extent applicable, be in recordable form, and will provide subordinations to the Ancillary Documents from any holder of a Mortgage on the Parcel in question.

ARTICLE VII DESIGN REVIEW

7.1 Control of Improvements. Declarant will determine the number (which shall not be less than three (3), and shall include at least one (1) architect) and appoint members of the design review committee ("Design Review Committee") provided for in the PD, which committee will have the right to review proposed designs of all of the initial buildings and other improvements to be constructed on the Parcels to insure compliance with the PD, including design guidelines set forth therein, and to maintain, consistent with the PD, the integrity of the exterior appearance and architectural harmony of development until the initial development of the improvements on each Parcel is completed. No such improvements shall be constructed on any Parcel without the prior approval of the Design Review Committee as herein set forth, provided approvals by the Design Review Committee will not be arbitrarily or capriciously withheld. The Design Review Committee shall operate pursuant to such standards, rules and regulations as may from time to time be established by Declarant, which shall at all times be consistent with the PD, and Declarant will have the sole right to seek any design changes under the PD, provided they do not adversely affect the rights of the Owner of a Parcel.

7.2 Submissions to Design Review Committee. To secure Design Review Committee's approval, the Owner shall deliver to Design Review Committee, in form reasonably satisfactory to Design Review Committee, three (3) complete sets of the following, together with any other submissions that may be required by the PD:

(a) A Parcel site plan and building plan showing, among other things, the location and dimension of all intended improvements including buildings, other structures, motor vehicular parking areas and facilities, loading and storage facilities and areas, areas to be landscaped, signs, lighting fixtures, means of ingress and egress, curb cuts, traffic patterns and drives and driveways;

(b) Drawings and specifications of all exterior surfaces, showing elevations, and including the color, quality and type of exterior construction materials;

(c) Grading and drainage plans;

(d) Landscaping plan;

(e) The type, style, size and candle power of all outdoor lighting fixtures;

(f) Drawings and design specifications of all proposed signs including the colors thereof and the quality and type of materials to be used and the manner of illumination;

(g) Proposed use of buildings and Parcel; and

(h) All such other information as may be reasonably requested by the Design Review Committee (provided such request is made within ten (10) business days after the submission of all of the other Parcel Plans and Specifications) which will enable Design Review Committee to determine the location, scale, design, character, exterior style and exterior appearance of the Owner's intended improvements.

All of the foregoing (collectively "Parcel Plans and Specifications") shall conform to the applicable provisions of this Declaration, the PD and other Laws.

7.3 Time for Review of Parcel Plans and Specifications. Within thirty (30) days after the Owner has served written notice upon Design Review Committee that it has submitted all required Parcel Plans and Specifications to Design Review Committee, Design Review Committee shall notify Owner in writing whether such Parcel Plans and Specifications are approved or disapproved. Any such disapproval shall set forth the reason or reasons for such disapproval. Should Design Review Committee fail to approve or disapprove the aforesaid Parcel Plans and Specifications in writing within said thirty (30) day period, then Design Review Committee shall be conclusively presumed to have approved same. No construction of the improvements provided for in the submitted Parcel Plans and Specifications shall be commenced until the expiration of the aforementioned thirty (30) day period (if no notice of disapproval is given within such period) or the receipt of Design Review Committee's written approval of Parcel Plans and Specifications, whichever shall first occur.

7.4 Time for Review of Revised Parcel Plans and Specifications. If Design Review Committee shall disapprove any part of the Parcel Plans and Specifications submitted as aforesaid, the Owner shall revise its Parcel Plans and Specifications to incorporate such changes and shall deliver three (3) complete sets of revised Parcel Plans and Specifications to Design Review Committee and Design Review Committee shall have fifteen (15) days within which to review such revised Parcel Plans and Specifications to determine Owner's compliance with

) Design Review Committee's requested changes. Should Design Review Committee fail to advise Owner in writing of whether or not such revised Parcel Plans and Specifications are in compliance with the suggested changes within the specified period, then Design Review Committee's approval shall be conclusively presumed to have been granted.

7.5 Changes in Approved Parcel Plans and Specifications. Owner shall secure the approval of Design Review Committee to any material change or revision in approved Parcel Plans and Specifications, other than those that may be required by the City, in the manner provided in this Article for the approval of Parcel Plans and Specifications. Design Review Committee shall endeavor to review such changes or revisions within a shorter period of time than the time provided herein but shall not be required to do so.

7.6 Owner's Rights--Arbitration. If Owner believes that the disapproval of any Parcel Plans and Specifications is arbitrary and capricious, Owner must, as its sole remedy, submit the matter to final and binding arbitration pursuant to the arbitration Article of this Declaration. The Arbitration Costs shall be paid as provided in the arbitration Article of this Declaration, provided if the Design Review Committee predominately prevails in the arbitration it shall be deemed the prevailing party.

7.7 Approvals, Fees, Responsibilities. Design Review Committee shall be entitled to reimbursement of its reasonable out-of pocket costs in connection with the reviews and approvals provided for under this Article, which reimbursement shall be payable to Declarant by the Owner submitting the Parcel Plans and Specifications for approval to Design Review Committee within thirty (30) days after billing. Design Review Committee shall not be required to approve any Parcel Plans and Specifications until it receives any such due and unpaid reimbursements. Any reimbursements that remain unpaid shall be collectible by Declarant hereunder in the same manner as a lien for charges under this Declaration. Neither Design Review Committee, Declarant, nor their members, managers, agents, employees, architects, contractors, successors or assigns shall be liable in damages to any Owner or to any other Person submitting Parcel Plans and Specifications to any one or more of them for approval by reason of a mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure, other than a bad faith failure, to approve any Parcel Plans and Specifications. Every Person who submits Parcel Plans and Specifications to Design Review Committee for approval as herein provided agrees by submission of such Parcel Plans and Specifications, and every Owner or Person claiming by or through an Owner agrees by acquiring title to any part of a Parcel or any interest in a Parcel, that it will not bring any action or suit against such parties to recover any such damages.

7.8 Limitation on Design Review Committee's Powers and Rights. From and after the completion of construction of all of the initial buildings on a Parcel the terms and provisions of this Article requiring approval at any time thereafter shall be deemed abrogated and of no further force and effect as to such Parcel.

ARTICLE VIII

ADMINISTRATION

8.1 Administration of Association Elements. The direction and administration of the Association Elements shall be vested in the Board of Directors ("Board") which shall consist of five (5) individuals who shall be elected in the manner hereinafter set forth; provided, however, that, irrespective of anything else contained in this Declaration, for a period commencing on the date this Declaration is executed and ending upon the qualification of the directors elected at the initial meeting of Voting Members, the Board shall consist of three (3) individuals, and Declarant shall have the right to designate and select the persons who shall serve as members of the Board or to exercise the powers of the Board.

8.2 Association. An association has been, or will be, formed as a not-for-profit corporation under the General-Not-for-Profit Corporation Act of the State of Illinois, having the name (or a name similar thereto) Lakeshore East Association, Inc. ("Association"), and shall be the governing body for all of the Parcel Owners for the maintenance, repair, replacement, renewal, insurance, administration and operation of the Association Elements. The Board shall be deemed to be the "Board of Managers" for the Parcel Owners. The Association shall not be deemed to be conducting a business of any kind, and all funds received by the Association shall be held and applied by it for the use and benefit of Parcel Owners in accordance with the provisions contained herein. Each Parcel Owner shall be a member of the Association so long as such Owner shall be a Parcel Owner, and such membership shall automatically terminate when such Owner ceases to be a Parcel Owner, and upon the transfer of the ownership interest the transferee thereof shall likewise succeed to such membership in the Association. The Association shall have one class of membership. If bylaws are not separately adopted, this Declaration shall serve as the bylaws of the Association.

8.3 Voting Rights. There shall be one individual with respect to each Parcel (other than Parcels 19 and 20 which are to be dedicated as the Neighborhood Park and School and the Com Ed Parcel which is to be used for street and open space purposes, which excluded Parcels shall not be voting Parcels, (the included Parcels herein referred to as the "Association Parcels")), who shall at all times be designated by the Owners of such Association Parcel, who shall represent all Owners of such Association Parcel in connection with this Declaration, and who shall be entitled to vote at any meeting of the Association Parcel Owners, which in the event of an Association Parcel that is the subject of one or more condominium, townhome, or parkhome declarations shall be designated by the boards of managers of the condominium, townhome, or parkhome associations for such Association Parcel, and which individual shall be known as and herein referred to as the "Voting Member" in respect of such Association Parcel. The same individual may serve as the Voting Member for more than one Association Parcel, and such individual need not be an Owner or resident of any Parcel. Such Voting Member designated by such Association Parcel Owners shall be such Association Parcel Owners' duly authorized attorney-in-fact to act as proxy on such Owners' behalf. Such designation shall be made in writing to the Board, shall be revocable at any time by actual notice to the Board of the death or judicially declared incompetence of such Voting Member, or by written notice to the Board by the Association Parcel Owners that appointed such Voting Member. Any or all Voting Members may be present at any meeting of the Voting Members and may vote or take any other

20732020

action as a Voting Member either in person or by proxy. The total number of votes of all Voting Members shall be one hundred (100) ("Votes"). On the date of this Declaration, and on each January 1 thereafter ("Determination Date"), the number of Votes the Owners of each Association Parcel and the Voting Member for such Association Parcel shall be entitled to in respect of that Association Parcel for the entirety of such calendar year ("Determination Year") shall be determined as follows:

(a) As used herein, the following terms shall have the following meanings:

(i) CO Parcel: An Association Parcel at all times after the first certificate of occupancy is issued for a building constructed on such Association Parcel after the date hereof, provided if separate certificates of occupancy are issued for condominium, townhome or parkhome units in a building located on an Association Parcel, such Association Parcel shall not be deemed a CO Parcel until eighty percent (80%) of the certificates of occupancy for all units in such building are issued. The CO Parcels are a subcategory of the Association Parcels.

(ii) CO Qualifying Parcel: A CO Parcel other than CO Parcel 3, 3A, 3B, 3C, 3D, 12, 15, 16, 18, and 22. The CO Qualifying Parcels are a subcategory of the CO Parcels.

(iii) CO Parcel Square Footage: The floor area square footage of all building improvements located on a CO Parcel at the time in question, excluding garage and parking areas, as determined by the Declarant applying uniform standards to all Parcels, or after the Board is selected, the Board, which determination shall be conclusive absent manifest error.

(iv) Aggregate CO Parcel Square Footage: The total of all CO Parcel Square Footage for all CO Parcels at the time in question.

(v) CO Parcel Percentage: As to each CO Parcel, the percentage derived from dividing the CO Parcel Square Footage for such CO Parcel by the Aggregate CO Parcel Square Footage, rounded to two decimal places, at the time in question.

(vi) Land Parcel Percentage: As to each Association Parcel, the percentage for such Association Parcel set forth on Exhibit 8.3-1.

(vii) Period A: All times prior to the existence of the first CO Qualifying Parcel.

(viii) Period B: All times after the existence of the first CO Qualifying Parcel and prior to the existence of the third CO Qualifying Parcel.

(ix) Period C: All times after the existence of the third CO Qualifying Parcel and prior to the existence of the eighth CO Qualifying Parcel.

(x) Period D: All times after the existence of the eighth CO Qualifying Parcel.

(xi) Proportionate Share: For each Association Parcel and in respect of the Owners of such Association Parcel, the percentage derived from dividing the total Votes attributable to the Association Parcel in question at the time in question by one hundred (100), rounded to two decimal places.

(b) In allocating the Votes as provided herein, the determinations shall be rounded to the nearest whole Vote so that exactly one hundred (100) whole number of Votes are allocated.

(c) For each Determination Year for which the Determination Date occurs during Period A, one hundred (100) Votes shall be allocated among each of the Association Parcels based on the Land Parcel Percentage in effect on the Determination Date for each Association Parcel.

(d) For each Determination Year for which the Determination Date occurs during Period B, seventy-five (75) Votes shall be allocated among each of the Association Parcels based on the Land Parcel Percentage in effect on the Determination Date for each Association Parcel, and twenty-five (25) Votes shall be allocated among each of the Association Parcels that is also a CO Parcel based on the CO Parcel Percentage in effect on the Determination Date for each CO Parcel.

(e) For each Determination Year for which the Determination Date occurs during Period C, twenty-five (25) Votes shall be allocated among each of the Association Parcels based on the Land Parcel Percentage in effect on the Determination Date for each Association Parcel, and seventy-five (75) Votes shall be allocated among each of the Association Parcels that is also a CO Parcel based on the CO Parcel Percentage in effect on the Determination Date for each CO Parcel.

(f) For each Determination Year for which the Determination Date occurs during Period D, ten (10) Votes shall be allocated among each of the Association Parcels based on the Land Parcel Percentage in effect on the Determination Date for each Association Parcel, and ninety (90) Votes shall be allocated among each of the Association Parcels that is also a CO Parcel based on the CO Parcel Percentage in effect on the Determination Date for each CO Parcel.

(g) Any actions that are to be taken by the Voting Members can in all events be taken by unanimous written consent.

(h) The allocations of Votes as set forth herein, and corresponding determinations of Proportionate Shares, have been made with the intent of being consistent with and taking into account any legally required factors.

8.4 Meetings.

(a) Quorum. Meetings of the Association Parcel Owners shall be held at the notice address for the Association in Cook County, Illinois as provided in this Declaration, or at such other place in Cook County, Illinois, as may be designated in any notice of a meeting. The presence in person or by proxy at any meeting of Voting Members holding at least twenty percent (20%) of the total Votes shall constitute a quorum. Unless otherwise expressly provided herein, any action may be taken at any meeting of the Voting Members at which a quorum is present upon the affirmative vote of the Voting Members having a majority of the total Votes present in person or by proxy at such meeting.

(b) Initial and Annual Meeting. The initial meeting of the Voting Members shall be held upon not less than twenty-one (21) nor more than thirty (30) days written notice given by the Declarant. Said initial meeting shall be held no later than sixty (60) days after the date that Period D begins. Thereafter, there shall be an annual meeting of the Voting Members on the second Tuesday of December following such initial meeting, and on the second Tuesday of December of each succeeding year thereafter at 7:30 P.M., or at such other reasonable time or date as may be designated by written notice of the Board delivered to the Voting Members.

(c) Special Meetings. Special meetings of the Voting Members may be called at any time after the initial meeting provided for herein for the purpose of considering matters which, by the terms of this Declaration, require the approval of all or some of the Voting Members, or for any other reasonable purpose; provided, however, that the following matters shall require the approval of Voting Members having not less than two-thirds (2/3) of the total Votes: (i) the merger or consolidation of the Association; and (ii) the acquisition, transfer, purchase or sale or lease of real estate on behalf of the Association. Special meetings may be called by written notice authorized by a majority of the Board, the President of the Board, or by Voting Members holding at least twenty percent (20%) of the total Votes, and delivered not less than ten (10) days and no more than thirty (30) days prior to the date fixed for said meeting. The notices shall specify the date, time and place of the meeting and the matters to be considered.

8.5 Notices of Meetings. Except as otherwise provided herein, notices of meetings of the Voting Members required to be given herein may be delivered either personally or by regular mail to the persons entitled to vote thereat, addressed to each such person at the address given by such Voting Member to the Board for the purpose of service of such notice, or to the notice address of the Parcel Owner to which such voting right applies, if no address has been given to the Board, provided that any such notice shall be delivered no less than ten (10) and no more than thirty (30) days prior to the date fixed for such meeting and shall state the time, place and purpose of such meeting.

8.6 Board of Directors.

(a) The initial Board of Directors designated by the Declarant pursuant hereto shall consist of three (3) directors who shall serve without compensation. Such initial Board shall serve for a period commencing on the date this Declaration is executed and ending upon the qualification of the directors elected at the initial meeting of Voting Members held as provided herein. Said initial Board may, on behalf of the Declarant, exercise the Reserved Declarant Rights. At the initial meeting of Voting Members held as provided herein, the Voting Members shall elect the Board. In all elections for members of the Board, each Voting Member shall be

entitled to vote on a non-cumulative voting basis and the candidates receiving the highest number of Votes with respect to the number of offices to be filled shall be deemed to be elected. Members of the Board elected at the initial meeting shall serve until the first annual meeting. At the first annual meeting five (5) Board members shall be elected. The three (3) persons receiving the highest number of Votes shall be elected to a term of two (2) years, and the two (2) persons receiving the next highest number of Votes shall be elected for a term of one (1) year. The election as between candidates receiving the same number of Votes shall be determined by lot. All members of the Board shall be elected at large. Upon the expiration of the terms of office of the Board members so elected at the initial meeting and thereafter, successors shall be elected for a term of two (2) years each. The Voting Members holding at least two-thirds (2/3) of the Votes may from time to time at any annual or special meeting increase or decrease the term of office of Board members, provided that the terms of at least one-third (1/3) of the persons on the Board shall expire annually. Members of the Board shall receive no compensation for their services. Vacancies in the Board, including vacancies due to any increase in the number of persons on the Board, shall be filled by the Voting Members present at the meeting at which the vacancy occurs, the next annual meeting or a special meeting of the Voting Members called for such purpose. Vacancies may also be filled by the Board by a two-thirds (2/3) vote of the remaining members thereof at a special meeting of the Board which vacancy shall be filled until the next annual meeting of the Voting Members or for a period terminating no later than thirty (30) days following the filing of a petition signed by Voting Members holding twenty percent (20%) of the Votes requesting a meeting of the Voting Members to fill the vacancy for the balance of the term. A meeting of the Voting Members shall be called for purposes of filling a vacancy on the Board no later than thirty (30) days following the Voting Members filing of a petition signed by Voting Members holding twenty percent (20%) of the Votes requesting such a meeting. Except as otherwise provided in this Declaration, the Association Elements shall be managed by the Board and the Board shall act by majority vote of those present at its meetings when a quorum exists. Meetings of the Board may be called, held and conducted in accordance with such regulations as the Board may adopt; provided, however, that each Voting Member shall be entitled to notice, in the same manner as provided herein for notices of meetings of Voting Members, of any meeting of the Board called for the purpose of considering the adoption of the proposed annual budget or any increase or establishment of an assessment. More than one-half of the total number of members on the Board shall constitute a quorum. Any member of the Board may succeed himself. Any actions that are to be taken by the Board can in all events be taken by unanimous written consent.

(b) From and after the completion of construction of all of the initial buildings on all Association Parcels, if the Board adopts a budget requiring assessment against the Parcel Owners in any fiscal or calendar year exceeding one hundred and fifteen percent (115%) of the assessments for the preceding year, the Board, upon written petition by the Voting Members with twenty percent (20%) of the Votes filed within fourteen (14) days of the Board action, shall call a meeting of the Voting Members within thirty (30) days of the date of filing of the petition to consider the budget. Unless a majority of the Votes of the Voting Members present are cast at the meeting to reject the budget, the budget shall be deemed to be ratified, regardless of whether or not a quorum is present. In any determination of whether assessments exceed one hundred and fifteen percent (115%) of assessments in prior years, any authorized provisions for reasonable reserves for repair or replacement of the Association Elements, and anticipated

) expenses by the Association which are not anticipated to be incurred on a regular or annual basis, shall be excluded from the computation.

(c) The Board shall elect from amongst its members a President who shall preside over both its meetings and those of the Voting Members, and who shall be the chief executive officer of the Board and the Association and who shall be designated to mail and receive all notices and execute all amendments hereto as provided herein. The Board shall also elect a Secretary who shall keep the minutes of all meetings of the Board and of the Voting Members and who shall, in general, perform all the duties incident to the office of the Secretary, a Treasurer to keep the financial records and books of account, and such additional officers as the Board shall see fit to elect. The term of office for each officer shall be until the next succeeding annual meeting of the Board, and until his successor shall be duly elected or appointed and qualified pursuant hereto. Vacancies in any office shall be filled by the Board by a majority vote of the remaining members thereof at a special meeting of the Board. Any officer elected to fill a vacancy shall hold office for a term equal to the unexpired term of the officer such individual succeeds. Any officer may be removed for cause at any time by a vote of two-thirds (2/3) of the total membership of the Board at a special meeting thereof. Any officer may succeed himself, and an individual may hold more than one officer position.

(d) Written notice stating the place, date and hour of any meeting of the Board shall be delivered to each member of the Board personally or by regular mail not less than five (5) days prior to the date of such meeting. The purpose for which the meeting is called shall be stated in the notice.

(e) All meetings of the Board, except if the Board determines an executive session is appropriate, shall be open to attendance by any Voting Member. Any Voting Member may record the proceedings at meetings or portions thereof by tape, film or other means, provided, however, that the Board may prescribe reasonable non-discriminatory rules and regulations to be given the right to make such recordings.

(f) Except for directors designated by Declarant as provided herein, any Board member may be removed from office at any time after the election of directors at the initial meeting of Voting Members pursuant hereto by affirmative vote of the Voting Members holding at least two-thirds (2/3) of the Votes present in person or by proxy, at any special meeting called for the purpose. A successor to fill the unexpired term of a Board member removed may be elected by the Voting Members at the same meeting or any subsequent meeting called for that purpose.

(g) The Association (or the Declarant, in the exercise of the Reserved Declarant Rights), shall furnish any Voting Member, within fourteen (14) working days of delivery to it of a request therefor, the names, addresses, telephone numbers (if known), and the number of Votes of each Voting Member entitled to vote at the initial meeting of the Voting Members to elect members of the Board and at each subsequent meeting of the Voting Members to elect members of the Board.

8.7 General Powers of the Board. The Board shall have the following general powers:

(a) Subject to the Reserved Declarant Rights, the Board may engage the services of an agent to manage the portions of the Association Elements for which the Board is responsible pursuant to this Declaration, to the extent deemed advisable by the Board; provided, however, that any agreement for professional management shall have a term not to exceed one (1) year, renewable by agreement of the parties for successive one (1) year periods, or if for a longer term must be terminable on not more than ninety (90) days notice without the payment of money.

(b) The Board or its agent may enter any Parcel when necessary in connection with any maintenance, repair, replacement or renewal for which the Board is responsible.

(c) The Board may authorize and charge as a Common Expense additions, alterations, or improvements to the Association Elements, provided the Board shall have no authority to acquire and pay for from the maintenance fund any structural alterations, capital additions to, or capital improvements of the Association Elements (other than for purposes of maintaining, repairing, replacing or renewing portions of the Association Elements, subject to all the provisions of this Declaration or unless required for emergency repair, protection or operation of the Association Elements), requiring an expenditure in excess of One Hundred Thousand Dollars (\$100,000.00) (in 2002 equivalent dollars) without in each case the prior written approval of the Voting Members holding at least two-thirds (2/3) of the Votes present in person or by proxy at any meeting held to consider such action. Any such expenditure shall be included in a budget as provided herein, and this requirement is in addition to the other provisions relating to the adoption of budgets. The cost of any such work to the Association Elements may be paid out of a special assessment which shall be payable by the Association Parcel Owners in accordance with their Proportionate Shares. It is understood that this provision is not intended to, and shall not, permit the costs of the initial construction of the Association Elements to be shifted from an Owner or Declarant that is responsible therefor to the Association.

(d) All agreements, contracts, deeds, leases, vouchers for payment of expenditures and other instruments shall be signed by such officer or officers, agent or agents of the Board and in such manner as from time to time shall be determined by written resolution of the Board. In the absence of such determination by the Board, such documents shall be signed by any officer of the Association.

(e) *Nothing herein contained shall be construed to give the Board authority to conduct an active business for profit on behalf of all the Parcel Owners or any of them.*

(f) The Board shall have the power and duty to provide for the designation, hiring, and removal of employees and other personnel, including lawyers and accountants, to engage or contract for the services of others, and to make purchases for the maintenance, repair, replacement, administration, management, and operation of the Association Elements, and to delegate any such powers to the manager or managing agent (and any such employees or other personnel as may be employees of the managing agent).

(g) The Board shall have the power to exercise all other powers and duties of the Board or the Association referred to in the Declaration. More specifically, the Board shall

exercise for the Association all powers, duties and authority vested therein by the Declaration and law except for such powers, duties and authority reserved thereby to the Voting Members of the Association. The powers and duties of the Board shall include, but shall not be limited to, the following matters:

- (i) Operation, care, upkeep, maintenance, replacement and improvement of the Association Elements in a neat and orderly manner and in accordance with legal requirements;
- (ii) Preparation, adoption and distribution of the annual budget for the Association Elements;
- (iii) Levying of assessments;
- (iv) Collection of assessments from Association Parcel Owners;
- (v) Employment and dismissal of the personnel necessary or advisable for the maintenance and operation of the Association Elements;
- (vi) Obtaining adequate and appropriate kinds of insurance;
- (vii) Adoption and amendment of reasonable non-discriminatory rules and regulations covering the details of the operation and use of the Association Elements, after a meeting of the Voting Members called for the specific purpose of discussing the proposed rules and regulations, notice of which contains the full text of the proposed rules and regulations; however, no rules or regulations may impair any rights guaranteed by the First Amendment to the Constitution of the United States or Section 4 of Article I of the Illinois Constitution;
- (viii) Keeping of detailed, accurate records of the receipts and expenditures affecting the use and operation of the Association Elements;
- (ix) To have access to each Parcel from time to time as may be necessary for the maintenance, repair, replacement or renewal of any Association Elements therein or accessible therefrom;
- (x) Pay operating and other expenses of, or related to, the Association Elements, including water, electricity and other necessary utility service, and insurance for the Association Elements, and real property taxes and governmental assessments for which this Declaration provides the Association is responsible as to certain of the Association Elements;
- (xi) Impose charges for late payments of an Association Parcel Owner's Proportionate Share of the Common Expenses, or any other expenses lawfully agreed upon, and after notice and an opportunity to be heard, levy reasonable fines for violation of this Declaration and rules and regulations of the Association; and

20732020

(xii) Assign the Association's right to future income, including the right to receive Common Expenses in connection with financings approved by the Board.

(h) Subject to the provisions hereof, the Board for the benefit of all the Parcel Owners shall pay from the assessments herein provided for expenses it incurs in exercising and performing its powers and duties, including the following:

(i) Operating and other expenses of, or related to, the Association Elements, including water, electricity and other necessary utility service, and insurance for the Association Elements, and real property taxes and governmental assessments for which this Declaration provides the Association is responsible as to certain of the Association Elements.

(ii) Maintenance, repair, replacement, and renewal, including painting, cleaning, and decorating, of the Association Elements and such furnishings and equipment for the Association Elements as the Board shall determine are necessary and proper.

(iii) Any other materials, supplies, utilities, equipment, labor, services, or items which the Board is required to secure or pay for, pursuant to the terms of this Declaration, or which in its opinion shall be necessary or proper for the maintenance, repair, replacement, or renewal or operation of the Association Elements or for the enforcement of any restrictions provided for herein.

(iv) Any amount necessary to discharge any mechanic's lien levied against the Association Elements or any part thereof. Where one or more Parcel Owners are responsible for the existence of such lien, they shall be jointly and severally liable for the cost of discharging it and any costs incurred by the Board by reason of said lien or liens shall be specifically assessed to said Parcel Owners.

(v) Maintenance and repair of any Parcel if such maintenance or repair is necessary, in the discretion of the Board, to protect the Association Elements and if a Parcel Owner of any Parcel has failed or refused to perform said maintenance or repair within a reasonable time after written notice of the necessity of said maintenance or repair delivered by the Board to said Parcel Owner, provided that the Board shall levy a special assessment against such Parcel Owner for the cost of said maintenance or repair.

(i) Prior to the election by Voting Members of the first Board, the Declarant shall, subject to the terms of this Declaration, have the authority to lease or to grant licenses, concessions and contracts with respect to any part of the Association Elements, all upon such terms as the Declarant deems appropriate, subject to the same limitations applicable to the Board as set forth in Section 8.7(a), and provided any such leases or grants on behalf of the Association

20732020

shall be on market terms if entered into with an Affiliate of Declarant. Upon election of the first Board, and thereafter, the Board shall have the same authority as aforesaid.

(j) The Association shall have no authority to forbear the payment of assessments by any Parcel Owner.

8.8 Insurance.

(a) The Board shall have the authority to and shall, to the extent reasonably obtainable, obtain insurance for those Association Elements that the Association is required to insure as provided in this Declaration as follows:

(i) Physical damage insurance on the Association Elements, subject to the following conditions:

(1) The Association Elements shall be insured for an amount not less than one hundred percent (100%) of their full insurable replacement cost on a blanket basis; and

(2) Perils to be covered by such policies shall be no less than "all risk" or "special form" on real property and "broad form" named perils on personal property, and such other perils as may be deemed appropriate by the Board.

(ii) Commercial General Liability insurance covering personal injury and property damage insuring against hazards of premises/operation, products and completed operations, contractual liability, personal injury liability (with exclusions (a) and (c) deleted), independent contractors and other extensions as deemed necessary by the Board. Such insurance shall provide limits of liability as deemed desirable by the Board, but in no event for less than Seven Hundred Fifty Thousand Dollars (\$750,000.00) with respect to each occurrence. Such policy shall be endorsed to cover cross-liability claims of one insured against the other.

(iii) Umbrella Liability insurance in excess of the required Comprehensive General Liability and Employer Liability policies in an amount deemed desirable by the Board, but in no event less than Five Million Dollars (\$5,000,000.00) with respect to each occurrence. Such policy shall be no less than "following form" coverage of the primary liability policies.

(iv) Worker's Compensation and Employer Liability (minimum amount \$100,000) as necessary to comply with applicable Laws, including voluntary compensation to cover employees not covered under the Illinois statute for benefits.

207332020

207332020

(v) A fidelity bond insuring the Association, the Board and the Parcel Owners against loss of funds as a result of the fraudulent or dishonest acts of any employee of the Association or its management agent or of any other person handling the funds of the Association or the Board in such amounts as the Board may deem necessary. The premium for such fidelity bond shall be a Common Expense. Such bond shall contain waivers of any defense based on the exclusion of persons who serve without compensation from any definition of "employee" or similar expression.

(vi) Directors' and Officers' Liability insurance in such amounts as the Board may determine to be reasonable.

(vii) Such other insurance, which may include, without limitation, any or all of the following, in such amounts as the Board may deem desirable; plate glass insurance; errors and omissions coverage for the directors of the Board; and medical payments coverage for members of the public injured on the Association Elements, without regard to liability of the Board or the Association.

The premiums for the above described insurance and bond shall be Common Expenses.

(b) Each Parcel Owner hereby waives and releases any and all claims which such Owner may have against the Association, its officers, members of the Board, Declarant, the manager and managing agent of the Association Elements, if any, and their respective employees and agents, for any damage to the Association Elements, the Parcels, or to any personal property located thereon caused by fire or other casualty to the extent that such damage for which it is covered by fire or other form of casualty insurance.

(c) The Board shall have the right to select substantial deductibles to the insurance coverages required or permitted under this Section if the economic savings justifies the additional risk and if permitted by Law. Expenses included within the deductible amount arising from insurable loss or damage shall be treated as Common Expenses.

8.9 Liability of the Board of Directors. Neither the members of the Board nor the officers of the Association shall be liable to the Parcel Owners for any mistake of judgment or for any other acts or omissions of any nature whatsoever as such Board members and officers except for any acts or omissions found by a court to constitute intentional wrongdoing or fraud. The Association Parcel Owners shall indemnify and hold harmless each of the members of the Board and each of the officers of the Association against all contractual and other liabilities to others arising out of contracts made by or other acts of the Board and officers of the Association on behalf of the Association, or arising out of their status as Board members or officers, unless any such contract or act shall have been made fraudulently or with intentional wrongdoing or contrary to the provisions of this Declaration. It is intended that the foregoing indemnification shall include indemnification against all costs and expenses (including, but not limited to, counsel fees, amounts of judgments paid and amounts paid or received in settlement) reasonably incurred in connection with the defense of any claim, action, suit or proceeding, whether civil, criminal, administrative, or other, in which any member of the Board or officers of the

Association may be involved by virtue of such persons being or having been such member or officer; provided, however, that such indemnity shall not be operative with respect to (a) any matter as to which such person shall have been finally adjudged in such action, suit or proceeding to be liable for intentional wrongdoing or fraud in the performance of his duties as such member or officer, or (b) any matter settled or compromised, unless, in the opinion of independent counsel selected by or in a manner determined by the Board, there is not reasonable ground for such persons being adjudged liable for intentional wrongdoing or fraud in the performance of his duties as such member or officer. It is intended that the liability of any Association Parcel Owner arising out of the aforesaid indemnity in favor of the members of the Board and officers of the Association shall be limited to its Proportionate Share at the time the indemnity obligation arises.

8.10 Certain Rights of the Declarant . Until the time established by the Declaration for the election of the initial Board by the Voting Members, the rights, titles, powers, privileges, trusts, duties and obligations vested in or imposed upon the Association or Board in this Declaration shall be held and performed by the Declarant directly or through its appointed Board ("Reserved Declarant Rights"). If the initial Board shall not be elected by the Voting Members at the time established by this Declaration, the Declarant shall continue in the aforesaid office for a period of thirty (30) days after written notice of its resignation is sent to all of the Voting Members, but in no event later than the time the Board is elected by the Voting Members as provided in this Declaration. In exercising such rights, and the other rights reserved by the Declarant pursuant to this Declaration, the Declarant shall not be under any disability which would otherwise be imposed by Law by reason of the Declarant's interest in the subject matter of any transaction, provided, however, that any such transaction shall have been entered into in good faith and subject to the other applicable limitations set forth herein.

ARTICLE IX

COMMON EXPENSES - MAINTENANCE FUND

9.1 Preparation of Estimated Budget. On or before November 1 of each year, the Board shall estimate the total amount necessary to pay the cost of wages, materials, insurance, services and supplies which will be required during the ensuing calendar year for the rendering of all services in connection with, and to maintain, repair, replace, renew, and insure, the Association Elements for which it is responsible, and to pay real estate taxes and governmental assessments on the Vertical Connections for which it is responsible for paying pursuant to the terms of the Declaration, together with a reasonable amount considered by the Board to be necessary for adequate reserves, including, without limitations, amounts to maintain a Capital Reserve. Within fifteen (15) days thereafter, the Board shall notify each Voting Member in writing as to the amount of such estimate, with reasonable itemization thereof and containing each Association Parcel Owner's respective assessment, provided, however, that such annual budget shall be furnished to each Voting Member at least thirty (30) days prior to its adoption by the Board. Said "estimated cash requirement" shall be assessed to the Association Parcel Owners according to each Parcel Owner's Proportionate Share from time to time in effect. On or before January 1 of the ensuing year, and the first day of each and every month of said year, each Association Parcel Owner shall be personally liable for and obligated to pay to the Board or as it may direct, one-twelfth (1/12) of the assessments made pursuant to this paragraph. On or before

April 1 of each calendar year the Board shall supply to all Voting Members an itemized accounting of the maintenance expenses for the preceding calendar year actually incurred and paid, together with a tabulation of the amounts collected pursuant to the estimates provided, and showing the net amount over or short of the actual expenditures plus reserves. Any net shortage or excess shall be applied as an adjustment to the installments due under the current year's estimate in the succeeding six (6) months after rendering of the accounting subject, however, to the provisions of the following Section. For purposes of this Declaration and the management and operation of the Association Elements, the calendar year shall be deemed to be the fiscal year of the Association. If there is more than one Person that is the Owner of a Parcel, all such Persons shall be severally, but not jointly, liable for such assessments and other obligations provided for in this Declaration in respect of such Parcel based upon their percentage ownership of such Parcel.

9.2 Capital Reserve; Supplemental Budget. The Association shall segregate and maintain a special reserve account to be used solely for making capital expenditures in connection with the Association Elements (the "Capital Reserve"). The Board shall determine the appropriate level of the Capital Reserve based on a periodic review of the useful life of improvements that constitute the Association Elements and equipment owned by the Association as well as periodic projections of the cost of anticipated major maintenance, repairs, replacements, or renewals of the Association Elements or the purchase of equipment to be used by the Association in connection with its duties hereunder. Each budget shall disclose that percentage of the annual assessment which shall be added to the Capital Reserve and each Association Parcel Owner shall be deemed to make a capital contribution to the Association equal to such percentage multiplied by each installment of the annual assessment paid by such Parcel Owner. Extraordinary expenditures not originally included in the annual estimate which may become necessary during the year shall be charged first against such portions of any contingency reserve or Capital Reserve, as applicable, which remains unallocated. If the estimated Common Expenses contained in the budget prove inadequate for any reason or in the event a nonrecurring Common Expense is anticipated for any year, then the Board may prepare and approve a supplemental budget covering the estimated deficiency or nonrecurring expense for the remainder of such year, copies of which supplemental budget shall be furnished to each Voting Member and thereupon a special or separate assessment shall be made to each Association Parcel Owner for its Proportionate Share of such supplemental budget. All Association Parcel Owners shall be personally liable for and obligated to pay their respective adjusted monthly amount, subject to the limitations set forth in Section 16.14 hereof. Any such special or separate assessment, if it involves proposed expenditures resulting in a total payment assessed to an Association Parcel equal to or greater than five (5) times the Parcel's most recent monthly assessment shall be subject to the affirmative vote of at least two-thirds (2/3) of the Votes that are present in person or by proxy at a meeting of the Voting Members specifically called for approving such special or separate assessment.

9.3 Initial Budget. The initial Board appointed by the Declarant shall determine and adopt the "estimated cash requirement" for the initial period commencing with the date of this Declaration and ending on December 31 of such calendar year, and shall continue to determine the "estimated cash requirement" for each succeeding calendar year until such time as the first Board elected hereunder takes office. Assessments shall be levied against the Association Parcel

Owners during said periods as provided in this Article for assessments that are made by the Board.

9.4 Failure to Prepare Annual Budget. The failure or delay of the Board to prepare or serve the annual or adjusted estimate on a Voting Member shall not constitute a waiver or release in any manner of an Association Parcel Owner's obligation to pay the assessments, charges and necessary reserves, as herein provided, whenever the same shall be determined, and in the absence of any annual estimate or adjusted estimate, the Parcel Owner shall continue to pay the monthly assessments at the then existing monthly rate established for the previous period until the monthly assessment which is first due more than ten (10) days after such new annual or adjusted estimate shall have been mailed or delivered.

9.5 Records of the Association. The managing agent or Board shall maintain the following records of the Association and make them available for examination and copying at convenient hours of weekdays by the Voting Members and their duly authorized agents or attorneys:

(a) Copies of this Declaration and any amendments, Articles of Incorporation of the Association, annual reports and any rules and regulations adopted by the Association or its Board. Prior to the organization of the Association, the Declarant shall maintain and make available the records set forth in this Subsection for examination and copying.

(b) Detailed accurate records, in chronological order, of the receipts and expenditures affecting the Association Elements, specifying and itemizing the maintenance and repair expenses of the Association Elements and any other expense incurred, and copies of all contracts, leases, or other agreements entered into by the Association.

(c) The minutes of all meetings of the Association and the Board. The Association shall maintain these minutes for a period of not less than seven (7) years.

(d) Such other records of the Association as are available for inspection by members of a not-for-profit corporation pursuant to the General Not-for-Profit Corporation Act, as amended.

(e) Upon ten (10) days notice to the Board and payment of a reasonable fee, any Association Parcel Owner shall be furnished a statement of account setting forth the amount of any unpaid assessments or other charges due and owing from such Association Parcel Owner.

A reasonable fee may be charged by the Association or its Board for the cost of copying.

9.6 Status of Collected Funds. All funds collected hereunder shall be held and expended for the purposes designated herein, and (except for such special assessments, if any, as may be levied hereunder against less than all the Parcel Owners and for such adjustments as may be required to reflect delinquent or prepaid assessments or user charges) shall be deemed to be held for the benefit, use and account of all the Association Parcel Owners in their Proportionate Shares.

9.7 Non-Use and Abandonment. No Parcel Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Association Elements or abandonment of their Parcels.

ARTICLE X LIENS, RIGHTS AND REMEDIES

10.1 Remedies Not Exclusive. The rights and remedies of a Creditor Owner provided for in this Article or elsewhere in this Declaration are cumulative and not intended to be exclusive of any other remedies to which such Creditor Owner may be entitled at law or in equity or by statute. A Creditor Owner may enforce, by a proceeding in equity for mandatory injunction, the Defaulting Owner's obligation to execute or record any document, or perform any obligation, which such Defaulting Owner is required to execute or perform under or pursuant to this Declaration. The exercise by such Creditor Owner of any right or remedy to which it is entitled hereunder shall not preclude or restrict the exercise of any other right or remedy provided hereunder or otherwise available at law or in equity or by statute.

10.2 No Set-Off. Each claim of any Creditor Owner arising under this Declaration shall be separate and distinct, and no defense, set-off, offset or counterclaim arising against the enforcement of any lien or other claim of any Creditor Owner shall thereby be or become a defense, set-off, offset or counterclaim against the enforcement of any other lien or claim.

10.3 Attorneys' Fees. A Defaulting Owner shall pay the reasonable attorneys' fees and court costs paid or incurred by a Creditor Owner in successfully enforcing its rights against a Defaulting Owner under this Declaration.

10.4 Lien Rights. If at any time any Defaulting Owner fails within ten (10) days after notice or demand to pay any sum of money due Declarant or the Association, or as provided in Section 3.3(b) a Developing Owner that is a Creditor Owner, under or pursuant to the provisions of this Declaration, then, in addition to any other rights or remedies, Declarant or the Association, as applicable, shall have a lien against the Parcel owned by the Defaulting Owner for the amount owed. Such liens shall arise immediately upon the recording of a notice by Declarant or the Association with the Office of the Recorder of Deeds, Cook County, Illinois, and may be enforced by Declarant or the Association, or as provided in Section 3.3(b) a Developing Owner that is a Creditor Owner, in a proceeding in equity to foreclose such lien in like manner as a mortgage of real property in the State of Illinois or by any other remedy available by statute or at law or in equity. Such liens shall continue in full force and effect until such sum of money and any accrued interest thereon shall have been paid in full. The liens provided for in this Section shall be subject and subordinate to any prior recorded Mortgage on the Parcel in question, except, unless otherwise agreed by Declarant or the Association, as applicable, in writing, for those liens arising out of a failure of an Owner to perform its obligations set forth in Article III or Article IV hereof, which liens will not be so subordinate. To the extent that any lien provided for herein on any Parcel would otherwise not be enforceable or lack priority without stating herein a maximum amount of such lien, the maximum amount of the lien created hereby on any Parcel be \$10,000,000 at any time.

10.5 Mortgagee Subrogation. The holder of a Mortgage on all or any portion of the Defaulting Owner's Parcel shall have the right to be subrogated to the position of the holder of any lien arising pursuant to this Article affecting the Defaulting Owner's Parcel upon payment by it of the amount secured by such lien to the holder thereof.

10.6 Default Interest. Any costs that are the responsibility of specific Owners and owed to the Declarant, the Association or another Owner pursuant hereto will be paid by the responsible Owner from time to time within thirty (30) days after written demand, except as may otherwise be provided herein. Interest shall accrue on sums owed by a Defaulting Owner to a Creditor Owner and shall be payable from the date any such sum first became due hereunder until paid in full, at a rate of interest equal to the lesser of: (a) the floating rate which is equal to three percent (3%) per annum in excess of the annual rate of interest from time to time announced by Bank One, or any successor thereto, as its corporate base rate of interest, or (b) the then maximum lawful rate of interest in Illinois applicable to the capacity of the Defaulting Owner and the nature of the debt. In the event a corporate base rate is not announced, and no maximum lawful rate applies, then interest shall accrue at the annual rate of fifteen percent (15%).

ARTICLE XI ARBITRATION

All questions, differences, disputes, claims or controversies arising under this Declaration which this Declaration specifically provides will be determined by arbitration, or involving an amount not exceeding One Hundred Thousand Dollars (\$100,000) (in 2002 equivalent dollars), which shall be not resolved within thirty (30) days after same shall arise, shall be submitted for arbitration to a panel of three (3) arbitrators at the Chicago Illinois office of the American Arbitration Association, or any successor organization, in accordance with its then existing Commercial Arbitration Rules, including those as to selection of arbitrators and methods of arbitration. Such arbitration may be initiated at the request of Declarant, the Association, or any Owner. The fees and costs of such arbitration ("Arbitration Costs"), e.g., filing fees, arbitrators' fees and expenses, court reporter's fees and transcript fees, but exclusive of witness' fees and attorneys' fees which shall be paid by the party calling such witnesses or attorneys, shall be borne by the prevailing party in the arbitration, or if there is none, equally by the parties to such arbitration. In determining any question, matter or dispute before such arbitrator, the arbitrator shall apply the provisions of this Declaration without varying therefrom in any respect and shall not have the power to add to, modify or change any of the provisions of this Declaration. The parties to the arbitration agree to fully cooperate and to obtain the cooperation of their respective employees, agents and contractors and to use their respective reasonable efforts to supply as witnesses any present or former employee, agent or contractor and to produce relevant documents which may be requested by the other. Any award of the arbitrators shall be final and binding upon the parties to the arbitration and judgment thereon shall be entered by any court exercising jurisdiction over the Project Parcel or the party against which the award was made.

For purposes of this Article, "2002 equivalent dollars" means the equivalent purchasing power at any time of the value of One Dollar (\$1.00) in calendar year 2002. The 2002 equivalent dollars of any amount shall be determined by multiplying said amount by one (1) plus a fraction, the numerator of which is the difference between (x) the monthly Consumer Price Index (as

hereinafter defined) last published prior to the date of such determination, and (y) the Consumer Price Index for January, 2002, and the denominator of which is the Consumer Price Index for January, 2002. As used herein, the term "Consumer Price Index" shall mean the Consumer Price Index for All Urban Consumers, Chicago-Gary-Lake County, IL-IN-WI, All Items (1982-84 = 100) for the applicable month published by the Bureau of Labor Statistics of the United States Department of Labor or any equivalent index agreed to by the parties to the arbitration if such index is no longer available.

ARTICLE XII UNAVOIDABLE DELAYS

No Owner, nor the Declarant, Design Review Committee, or Association, shall be deemed to be in default in the performance of any obligation created under or pursuant to this Declaration, other than an obligation requiring the payment of a sum of money, if and so long as non-performance of such obligation shall be caused by fire or other casualty, national emergency, governmental or municipal laws, enemy action, civil commotion, strikes, lockouts, war or national defense preemptions, acts of God, energy shortages or similar causes beyond the reasonable control of such party (other than inability to obtain or make payment of money) ("Unavoidable Delay"), and the time limit for such performance shall be extended for a period equal to the period of any such Unavoidable Delay. The party unable to perform ("Non-Performing Party") shall notify the party relying on the performance, in writing of the existence and nature of any Unavoidable Delay within a reasonable time after the onset of any such Unavoidable Delay. The Non-Performing Party shall, from time to time upon written request of the party relying on the performance, keep the party relying on the performance fully informed, in writing, of all further developments concerning any such Unavoidable Delay.

ARTICLE XIII ESTOPPEL CERTIFICATES

Each Owner, Declarant, and the Association shall, from time to time, within ten (10) days after receipt of a written request by an Owner or the Declarant, execute, acknowledge and deliver to the requesting party, or to any existing or prospective purchaser or mortgagee designated by the requesting party, a certificate ("Estoppel Certificate") stating to its knowledge:

(a) whether there is any existing default hereunder by the requesting party (or grounds therefor after giving the requisite notice hereunder), and, if so, specifying the nature and extent thereof;

(b) whether there are any sums which the party executing such Estoppel Certificate is entitled to receive or demand from the requesting party hereunder, and if there is any such sum, specifying the nature and amount thereof;

(c) the total amount of all liens being asserted or capable of being asserted after giving the requisite notice, if any, required hereunder by the party executing the Estoppel Certificate under the provisions of this Declaration in respect of the requesting party and describing the applicable provision or provisions and the details of any such lien claim;

(d) whether the party executing the Estoppel Certificate has requested that a matter in respect of the requesting party be submitted to arbitration pursuant to this Declaration, which matter has not been discharged, released or otherwise resolved, and if so, a copy of any such notice or notices shall be delivered with the Estoppel Certificate;

(e) the nature of any pending arbitration proceeding, or any finding resulting from any arbitration proceeding, pursuant to this Declaration in respect of the requesting party made within the ninety (90) days preceding the date of such Estoppel Certificate;

(f) the current address or addresses to which notices given to the party executing such Estoppel Certificate are required to be mailed under the notice provisions hereof, and

(g) such other facts as may be reasonably requested.

ARTICLE XIV NOTICES

14.1 Notice Addresses. All notices, demands, elections or other communications required, permitted or desired to be served hereunder, except as may be otherwise provided herein, shall be in writing and shall be delivered in person, by nationally recognized overnight carrier, or mailed as certified or registered matter, postage prepaid, return receipt requested, addressed as below stated:

<p>For notices to Declarant, the Association, the Board, or the Design Review Committee:</p>	<p>c/o Magellan Development Group, Ltd. One West Superior Place Suite 200 Chicago, IL 60610 Attention: Chief Executive Officer</p>
--	--

For notices
to the other Owners
of a Parcel:

The Owner of such Parcel, which may be given to the Voting Member for such Parcel, at the address set forth in Declarant's or the Association's records.

14.2 Delivery of Notice; Change of Address. Any notice, demand, election or other communication delivered as aforesaid shall be deemed received when delivered and any notice, demand, election or other communication mailed as aforesaid shall be deemed received three (3) business days after deposit in the United States mail, the next business day after deposit with a nationally recognized overnight carrier, or upon actual receipt, whichever is earlier. Addresses

and addressees for service of notice may be changed by written notice served as herein provided at least ten (10) days prior to the effective date of any such change.

ARTICLE XV TAXES; IMPACT FEE RECAPTURE

15.1 Open Space. Until it elects to proceed to begin construction of the improvements on its Parcel ("Open Space Period"), each Parcel Owner must maintain its Parcels as "open space" in accordance with the statutory requirements therefor for real estate tax valuation purposes, including 35 ILCS 200/10-155, so that the portion of the Project Parcel comprised of such Parcel, together with other Parcels so maintained, will be considered to be collectively used for such open space purposes to the extent they can so qualify. If all Parcels are improved so that they no longer qualify as "open space", then this provision no longer applies.

15.2 Real Estate Tax Documents. Each Parcel Owner hereby grants to Declarant an irrevocable power of attorney coupled with an interest to act on such Owner's behalf to execute (a) all open space exemption applications and documents in respect of the Open Space Period for the Parcel in question, and (b) tax division petitions and documents so that all Parcels included in any tax parcel are owned by only one Owner (collectively "Real Estate Tax Documents"). In addition thereto, each Parcel Owner shall execute and deliver to Declarant within ten (10) days after request by Declarant any such Real Estate Tax Documents which shall, to the extent applicable, be in form sufficient for filing, and to the extent required provide joinders to the Real Estate Tax Documents from any holder of a Mortgage on the Parcel in question. The applicable Owners will pay an allocable share of the costs incurred by Declarant in connection with the Real Estate Tax Documents as from time to time in good faith fairly determined by Declarant based on the square footage of land included in the tax parcels in question. All such costs that are the responsibility of Owners will be paid by the Owners to the Declarant from time to time within ten (10) days after demand.

15.3 Impact Fees. Provided under applicable Law at the time in question the development of the Parcel in question continues to be exempt from payment to the City of an impact fee that would otherwise be payable, at such time as an Owner receives a building permit to construct each initial building on its Parcel, such Owner will pay impact fees to Declarant based upon the number of residential units to be constructed under each such building permit application and upon the impact fee requirements that would, but for such exemption, be applicable thereto at the time of the permit receipt.

ARTICLE XVI GENERAL

16.1 Mutual Cooperation. In fulfilling obligations and exercising rights under this Declaration, each Owner shall cooperate with the other Owners to promote the efficient operation of each respective portion of the Project Property and the harmonious relationship among the Owners.

16.2 Insurance. Each Owner that is constructing improvements on another Owner's Parcel, or performing activities on another Owner's Parcel pursuant to a temporary construction

20732020

easement, as may be permitted by this Declaration shall, to the extent reasonably obtainable during the periods of such activities, maintain at its cost for the benefit of the other Owner in connection with such construction a commercial general liability insurance policy with broad form extensions covering claims for personal and bodily injury or property damage occurring in, on, under, within, upon or about the other Owner's Parcel as a result of such construction (including contractual liability insurance covering related obligations created by this Declaration including, but not limited to, those indemnity obligations contained herein), in such amounts as may be required by Law and as from time to time shall be carried by prudent owners of similar buildings in the City of Chicago, but in all events for limits of not less than One Million Dollars (\$1,000,000.00) combined single limit for personal and bodily injury or property damage with an additional Five Million Dollars (\$5,000,000.00) umbrella coverage, with available inflation riders. Such policy shall be endorsed to provide cross-liability or severability of interests for the named insureds. The policies described herein: (a) shall provide that the acts or omissions of any insured party shall not invalidate the policy as against any other insured party or otherwise adversely affect the rights of any other insured party under any such policy, (b) shall insure as additional insured the other Owner, and (c) shall provide for a minimum of thirty (30) days advance written notice of cancellation, non-renewal or material modification thereof to all insureds thereunder, unless such cancellation is for non-payment of premium, in which case only ten (10) days advance written notice shall be sufficient. Copies of all insurance required hereunder and renewal insurance policies or certified binders delineating all forms of coverage and endorsements required hereunder shall be delivered to the other Owner prior to the commencement of any construction and at least twenty (20) days prior to the expiration date of any such expiring insurance policy.

16.3 Construction Standards. Each Person, in exercising its rights or obligations under this Declaration to construct or maintain improvements, shall (a) perform all work in a good and workmanlike manner and in accordance with good construction practices, (b) conduct its activities that are permitted on any Owner's Parcel (unless it is curing a failure of such Owner to construct or maintain improvements) so as not to (i) cause any increase in the cost of construction on the Owner's Parcel or any part thereof, (ii) unreasonably interfere with any construction work being performed on the Owner's Parcel, or any part thereof, or (iii) unreasonably interfere with the use, occupancy or enjoyment of the Owner's Parcel or any part thereof, (c) comply with all applicable Laws, including the PD, (d) comply with all of the applicable provisions of this Declaration, and (e) take such actions as may be reasonably necessary to ensure the protection and safety of the Owner's and its Permittees' persons and property, and restore any uninsured damage caused to the Owner's property arising out of its activities.

16.4 Illegality, Invalidity or Unenforceability. The illegality, invalidity or unenforceability under law of any covenant, restriction or condition or any other provision of this Declaration shall not impair or affect in any manner the validity, enforceability or effect of the remaining provisions of this Declaration. If any of the options, privileges, covenants or rights created by this Declaration would otherwise be unlawful or void for violation of the rule against perpetuities or some analogous statutory provisions, the rule restricting restraints on alienation, or any other statutory or common law rules imposing time limits, then such provision shall continue only until twenty-one (21) years after the death of the last survivor of the now living lawful descendants of George W. Bush, President of the United States.

16.5 Headings. The headings of Articles and Sections in this Declaration are for convenience of reference only and shall not in any way limit or define the content, substance or effect of the Articles or Sections.

16.6 Amendment. Declarant reserves the right to amend the Declaration if it determines in good faith that the amendment does not have a material adverse effect on any Parcel Owner that does not consent to the amendment, e.g., any material decrease in rights or increase in obligations of such Parcel Owner, which amendment will be effective upon recording of such amendment which need only be executed by (a) Declarant, and (b) if Declarant determines that it would have a material adverse effect on a Parcel Owner, such adversely affected Parcel Owner and the holders of a Mortgage on the Parcel owned by such Parcel Owner. A copy of any such amendment shall be provided to each designated Voting Member prior to recording thereof. If Declarant's determination that an amendment did not have such a material adverse effect is objected to by an affected Parcel Owner and thereafter determined by a final judgment to be incorrect, such amendment shall be modified as ordered by the court or, if the court does not so order, modified to eliminate such material adverse effect unless agreed to by the Parcel Owner in question. This Declaration may also be amended or terminated by an instrument signed by the President or a Vice-President of the Board, and approved by the Association Parcel Owners having, in the aggregate, at least eighty percent (80%) of the total number of outstanding Votes, at a meeting called for that purpose, i.e., not only eighty percent (80%) of the total number of Votes present at the meeting in person or by proxy, provided, however, that any provisions herein which specifically grant rights to holders of Mortgages may be amended only with respect to such Mortgage by the written consent of the holders of such Mortgage, and provided further that no such amendment shall modify the allocation of Votes in the Association as to an Association Parcel, modify quorum and voting requirements for action by the Association, or increase liability for Common Expenses assessed against any Association Parcel, except to the extent authorized by an affected Owner and the holder of a Mortgage granted by such Owner, or modify the rights of Declarant, except to the extent authorized by Declarant. No amendment shall be adopted that is in violation of Law, including the PD.

16.7 Separate Agreements. The provisions hereof as to a particular Owner shall be subject to any variations that may be set forth in any written agreement as to such Owner and its Parcel entered into by Declarant and any such Owner ("Separate Agreement"), which Separate Agreement shall be binding on Declarant and such Owner only. In the event of a conflict with this Declaration, as between Declarant and such Owner, such Separate Agreement shall control. In no event shall the Separate Agreement have the effect of lessening the rights, or increasing the liabilities or costs, as set forth in this Declaration of other Owners that are not parties to the Separate Agreement, adversely affecting their Parcels, permitting violation of the PD, or creating a defense in an action by a Creditor Owner that is not a party to the Separate Agreement.

16.8 Abandonment of Easements. Easements created hereunder shall not be presumed abandoned by non-use or the occurrence of damage or destruction of a portion of the Project Property subject to an Easement unless the Owner benefited by such Easement states in writing its intention to abandon such Easement.

16.9 Governing Law. The parties hereto acknowledge that this Declaration has been executed and delivered in the City of Chicago, County of Cook, and State of Illinois. This

Declaration shall, in all respects, be governed, construed, applied and enforced in accordance with the laws of Illinois, including, without limitation, matters affecting title to all real property described herein.

16.10 No Third Party Beneficiary. This Declaration is not intended to give or confer any benefits, rights, privileges, claims, actions or remedies to any person or entity as a third party beneficiary under any Laws or otherwise.

16.11 Binding Effect and Assignment. The Easements, covenants, conditions, restrictions, burdens, uses, privileges and charges created under this Declaration shall exist at all times hereafter amongst, and be binding upon and inure to the benefit of, all parties having or acquiring any right, title or interest in or to any portion of, or interest or estate in, the Project Property and each of the foregoing shall run with the land. All rights which are specified in this Declaration to be rights of the Declarant are mortgageable, pledgeable, assignable or transferable. Any successor to, or assignee of the rights of the Declarant hereunder (whether as the result of voluntary assignment, foreclosure, assignment in lieu of foreclosure or otherwise) shall hold or be entitled to exercise the rights of Declarant hereunder as fully as if named as such party herein, provided that the holder of a Mortgage that forecloses on such Mortgage and is entitled to become Declarant in connection therewith will not be obligated to do so, but will only become Declarant if it elects to do so. No party exercising rights as Declarant hereunder shall have or incur any liability for the acts of any other party which previously exercised or subsequently shall exercise such rights. At such time if any as any portion of the Project Parcel that may now be owned or held by the City ("City Areas"), is acquired by conveyance, vacation, or otherwise by a Person that then has, either directly or through an Affiliate, an ownership interest in a Parcel, such City Areas in question shall automatically, without the necessity of any further action, become subject to the provisions of this Declaration, provided Declarant shall record an amendment to this Declaration confirming the addition of the City Areas if they are not included as part of the Project Parcel when this Declaration is first recorded, and if requested by Declarant or the Association, such acquiring Person shall confirm the foregoing as to such applicable City Areas by a recordable written acknowledgement, including a confirmation of any easements granted herein in respect of such City Areas.

16.12 Temporary Interference with Use of Easement. Any Owner and the Association may, in connection with the repair or replacement of the improvements on a Parcel, and upon reasonable advance notice to affected Owners, to the extent necessary temporarily obstruct, block, close off or impede the flow of pedestrian or vehicular ingress, egress or use over, across and through any of the Easements on any such Owner's Parcel, but shall use reasonable efforts to provide advance notice and minimize the effect on another Owner and must at all times provide reasonable alternate means of ingress, egress or use if required by an affected Owner.

16.13 Owner's Liability. From and after the closing of the transfer of a Parcel, the Owner, including Declarant, so transferring shall have no further liability for the obligations with respect to such Parcel which accrue after the date of the recording of the conveyance; and the transferee Owner shall be liable for matters thereafter accruing, provided, however, that nothing herein contained shall be construed so as to relieve the Parcel from any lien arising by reason of such liability, or the transferring Owner of such Parcel from any liabilities or obligations accrued under this Declaration prior to such recording.

16.14 Limitation of Certain Liability. Each Owner agrees that no partners, shareholders, officers, directors, members, managers or trustees of any Owner (a) shall have any personal liability to pay any amounts due by such Owner under this Declaration, or (b) shall be required to personally perform any of the covenants, agreements, duties or obligations of such Owner. Each Owner agrees that the liability of an Owner under this Declaration shall be limited to the assets of such Owner and not the personal assets of the partners shareholders, officers, directors, members, managers or trustees of such Owner. A negative capital account of a partner, member or other owner of an Owner shall not be deemed to be an asset of an Owner.

16.15 Ownership by Land Trustee. In the event title to any Parcel is conveyed to a land title holding trust, under the terms of which all powers of management, operation and control of the Parcel remain vested in the trust beneficiary or beneficiaries, then the property under such trust and the beneficiaries thereunder from time to time shall be responsible for payment of all obligations, liens or indebtedness and for the performance of all agreements, covenants and undertakings chargeable or created under this Declaration against such Owner of such Parcel. No claim shall be made against any such title holding trustee personally for payment of any lien or obligation hereunder created and the trustee shall not be obligated to sequester funds or trust property to apply in whole or in part against such lien or obligation. The amount of such lien or obligation shall continue to be a charge or lien upon the Parcel and the beneficiaries of such trust notwithstanding any transfers of the beneficial interest of any such trust or any transfers of title of such Parcel.

16.16 Rules of Construction. The following rules of construction shall control the interpretation of this Declaration: (a) all pronouns, whether used in the masculine, feminine or neuter gender, shall include all other genders, (b) the singular shall include the plural and the plural shall include the singular, as the context may permit or require, (c) unless the context expressly provides otherwise, all references to Articles, Sections, Subsections, Paragraphs, Subparagraphs, Clauses, Subclauses or Exhibits shall refer to the corresponding Article, Section, Subsection, Paragraph, Subparagraph, Clause, or Subclause of, or Exhibit attached to, this Agreement, and each of the Exhibits attached to this Declaration is made a part hereof for all purposes, (d) unless the context expressly provides otherwise, the words "hereunder", "herein" and "hereof" and other words and phrases of like import shall refer to each and every term and provision of this Declaration, (e) the words "includes" and "including" are not limiting, (f) the words "may not" are prohibitive and not permissive, (g) the word "or" is not exclusive, and (h) the provisions hereof shall be liberally construed to give effect to the intent hereof. Any provision herein that requires any matter, item, document or evidence to be "satisfactory", "reviewed", "approved" or "consented to" by a party shall be determined by such party in its sole discretion, unless otherwise expressly provided herein to the contrary, and any consent or approval that a party is to provide, unless expressly provided to the contrary, may be withheld or conditioned in such party's sole and exclusive judgment and discretion. The provisions of this Declaration shall not be construed more strictly against any party bound hereby for any reason, including the reason that such party or its representative may have initially drafted such provisions.

IN WITNESS WHEREOF, the undersigned have executed this Declaration as of the day and year first above written.

DECLARANT:

LAKESHORE EAST LLC, an Illinois
limited liability company

By: [Signature]

Name: David J. Collins

Its: Manager

20732020

THE FOLLOWING PARTIES, THE OWNERS OF ALL PARCELS NOT NOW OWNED BY LAKESHORE (OTHER THAN THE CITY AREAS), HEREBY JOIN IN THIS DECLARATION FOR THE PURPOSE OF SUBJECTING ALL PARCELS OWNED BY THE UNDERSIGNED TO THE TERMS OF THIS DECLARATION:

**PARCEL 1 AND COM ED SOUTH
PARCEL OWNER:**

ASN LAKESHORE EAST LLC, a
Delaware limited liability company
By: Archstone-Smith Operating Trust, a
Maryland real estate investment
trust, its sole member

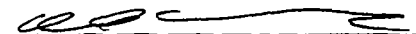
By: 

Name: James R. Dwyer

Its: Regional Vice Pres.

**PARCEL 2, 3A, AND 3B AND COM ED
NORTH PARCEL OWNER:**

LAKESHORE EAST PARCEL P LLC, an
Illinois limited liability company

By: 

Name: David J. Collins

Its: Manager

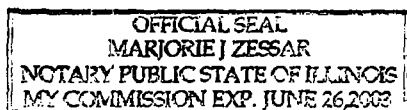
20732020

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, Marjorie J. Zessar, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that David J. Carling, a Manager of LAKESHORE EAST LLC, an Illinois limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 26th day of June, 2002.

Marjorie J. Zessar
Notary Public



20732020

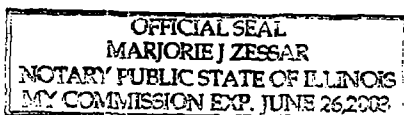
20732020

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, Marjorie J. Zessar, a Notary Public in and for said County, in the State aforesaid,
DO HEREBY CERTIFY, that James E. Dunlop, Regional Vice President of
ARCHSTONE-SMITH OPERATING TRUST, a Maryland real estate investment trust, who is
personally known to me to be the same person whose name is subscribed to the foregoing
instrument, appeared before me this day in person and acknowledged that he/she signed and
delivered the said instrument as his/her own free and voluntary act and as the free and voluntary
act of said real estate investment trust, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 25th day of June, 2002.

Marjorie J. Zessar
Notary Public



STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

20732020

I, Marjorie J. Zessar, a Notary Public in and for said County, in the State aforesaid,
DO HEREBY CERTIFY, that David J. Carlini, a Manager of LAKESHORE
EAST PARCEL P LLC, an Illinois limited liability company, who is personally known to me to
be the same person whose name is subscribed to the foregoing instrument, appeared before me
this day in person and acknowledged that he/she signed and delivered the said instrument as
his/her own free and voluntary act and as the free and voluntary act of said limited liability
company, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 25th day of June, 2002.

Marjorie J Zessar
Notary Public



20732020

This instrument was prepared by
and upon recording return to:
Alzheimer & Gray
10 S. Wacker Drive Suite 4000
Chicago, Illinois 60606
Attention: Edward E. Wicks

20732020

Property Address:

221 Columbus Drive, Chicago, IL

Permanent Index Numbers:

17-10-318-014
17-10-318-015
17-10-318-016
17-10-318-023
17-10-318-024
17-10-318-026
17-10-318-027
17-10-318-029
17-10-318-030
17-10-318-032
17-10-318-033
17-10-318-035
17-10-318-036
17-10-400-015
17-10-400-016
17-10-401-010
17-10-401-012
17-10-401-013

EXHIBIT R-1

20732020

A TRACT OF LAND, COMPRISED OF THAT PART OF THE LANDS LYING EAST OF AND ADJOINING FORT DEARBORN ADDITION TO CHICAGO, SAID ADDITION BEING THE WHOLE OF THE SOUTHWEST FRACTIONAL QUARTER OF SECTION 10, TOWNSHIP 39 NORTH RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EAST LINE OF NORTH COLUMBUS DRIVE (AS SAID NORTH COLUMBUS DRIVE WAS DEDICATED AND CONVEYED TO THE CITY OF CHICAGO BY INSTRUMENT RECORDED IN THE RECORDER'S OFFICE OF COOK COUNTY, ILLINOIS, ON THE 5TH DAY OF JUNE 1972, AS DOCUMENT 21925615) SAID POINT BEING 300.00 FEET, MEASURED ALONG SAID EAST LINE, NORTH OF THE POINT OF INTERSECTION OF SAID EAST LINE (EXTENDED SOUTH) WITH THE NORTH LINE OF EAST RANDOLPH STREET (AS SAID EAST RANDOLPH STREET WAS DEDICATED AND CONVEYED TO THE CITY OF CHICAGO BY INSTRUMENT RECORDED IN SAID RECORDER'S OFFICE ON THE 11TH DAY OF DECEMBER, 1979, AS DOCUMENT 25276446) AND RUNNING

THENCE NORTH ALONG SAID EAST LINE OF NORTH COLUMBUS DRIVE, A DISTANCE OF 468.88 FEET TO A POINT WHICH IS 768.88 FEET, AS MEASURED ALONG SAID EAST LINE AND THE SOUTHWARD EXTENSION THEREOF, NORTH OF THE INTERSECTION WITH SAID NORTH LINE OF EAST RANDOLPH STREET;

THENCE EAST ALONG A LINE PERPENDICULAR TO SAID EAST LINE OF NORTH COLUMBUS DRIVE, A DISTANCE OF 160.57 FEET;

THENCE NORTH ALONG A LINE PERPENDICULAR TO THE LAST DESCRIBED COURSE, A DISTANCE OF 146.62 FEET;

THENCE EAST ALONG A LINE PERPENDICULAR TO THE LAST DESCRIBED COURSE, A DISTANCE OF 221.17 FEET;

THENCE NORTH ALONG A LINE PERPENDICULAR TO THE LAST DESCRIBED COURSE, A DISTANCE OF 141.11 FEET TO AN INTERSECTION WITH THE SOUTHERLY LINE OF EAST WACKER DRIVE, AS SAID EAST WACKER DRIVE WAS DEDICATED AND CONVEYED TO SAID CITY OF CHICAGO BY INSTRUMENT RECORDED ON THE 5TH DAY OF JUNE, 1972 AS DOCUMENT NUMBER 21925615;

THENCE SOUTHEASTWARDLY ALONG SAID SOUTHERLY LINE OF EAST WACKER DRIVE (DEFLECTING 94 DEGREES 35 MINUTES 31 SECONDS TO THE RIGHT FROM THE NORTHWARD EXTENSION OF THE LAST DESCRIBED COURSE), A DISTANCE OF 390.00 FEET TO AN INTERSECTION WITH THE NORTHWARD EXTENSION OF THE WEST LINE OF NORTH FIELD BOULEVARD, 127.00 FEET WIDE, AS SAID NORTH FIELD BOULEVARD WAS DEDICATED AND CONVEYED TO SAID CITY OF CHICAGO BY INSTRUMENT RECORDED ON THE 12TH DAY OF DECEMBER 1986 AS DOCUMENT 86597179;

THENCE SOUTHEASTWARDLY ALONG THE SOUTHERLY LINE OF EAST WACKER DRIVE, AS SAID EAST WACKER DRIVE WAS DEDICATED AND CONVEYED TO THE CITY OF CHICAGO BY SAID INSTRUMENT RECORDED ON THE 12TH DAY OF DECEMBER, 1986 AS DOCUMENT 86597178 (SAID SOUTHERLY LINE DEFLECTING 94 DEGREES 48 MINUTES 48 SECONDS TO THE

RIGHT FROM THE NORTHWARD EXTENSION OF SAID WEST LINE OF NORTH FIELD BOULEVARD), A DISTANCE OF 127.45 FEET TO AN INTERSECTION WITH THE NORTHWARD EXTENSION OF THE EAST LINE OF NORTH FIELD BOULEVARD, AFORESAID;

THENCE CONTINUING SOUTHEASTWARDLY ALONG SAID SOUTHERLY LINE OF EAST WACKER DRIVE AS DEDICATED AND CONVEYED BY DOCUMENT NUMBER 86597178 (DEFLECTING 96 DEGREES 28 MINUTES 40 SECONDS TO THE RIGHT WITH THE NORTHWARD EXTENSION OF SAID EAST LINE OF NORTH FIELD BOULEVARD), A DISTANCE OF 351.08 FEET TO AN INTERSECTION WITH THE WEST LINE OF THE STRIP OF LAND 66.00 FEET WIDE, AS DEDICATED AND CONVEYED FOR PUBLIC UTILITIES TO SAID CITY OF CHICAGO BY INSTRUMENT RECORDED ON THE 12TH DAY OF DECEMBER, 1986 AS DOCUMENT 86597181;

THENCE CONTINUING SOUTHEASTWARDLY ALONG SAID SOUTHERLY LINE OF EAST WACKER DRIVE AS DEDICATED AND CONVEYED BY SAID DOCUMENT NUMBER 86597178 (SAID SOUTHERLY LINE DEFLECTING 94 DEGREES 35 MINUTES 50 SECONDS TO THE RIGHT WITH THE NORTHWARD EXTENSION OF SAID WEST LINE OF THE 66.00 FOOT WIDE STRIP OF LAND, AFORESAID), A DISTANCE OF 440.26 FEET TO AN INTERSECTION WITH THE WEST LINE OF NORTH LAKE SHORE DRIVE, AS SAID NORTH LAKE SHORE DRIVE WAS DEDICATED BY INSTRUMENT RECORDED ON THE 14TH DAY OF MARCH 1979 AS DOCUMENT 24879733;

THENCE SOUTH ALONG SAID WEST LINE OF NORTH LAKE SHORE DRIVE, DEFLECTING 85 DEGREES 24 MINUTES 10 SECONDS TO THE RIGHT FROM AN EASTWARD EXTENSION OF THE LAST DESCRIBED COURSE A DISTANCE OF 356.12 FEET;

THENCE CONTINUING SOUTHWARDLY ALONG SAID WESTERLY LINE OF NORTH LAKE SHORE DRIVE, SAID WESTERLY LINE BEING HERE AN ARC OF A CIRCLE, CONCAVE WESTERLY AND HAVING A RADIUS OF 5719.58 FEET, AN ARC DISTANCE OF 71.34 FEET (THE CHORD OF SAID ARC DEFLECTING 04 DEGREES 17 MINUTES 51.5 SECONDS TO THE RIGHT FROM A SOUTHWARD EXTENSION OF THE LAST DESCRIBED COURSE AND HAVING A LENGTH OF 71.34 FEET);

THENCE CONTINUING SOUTHWARDLY ALONG SAID WESTERLY LINE OF NORTH LAKE SHORE DRIVE (SAID WESTERLY LINE BEING HERE A STRAIGHT LINE DEFLECTING 00 DEGREES 21 MINUTES 26.5 SECONDS TO THE RIGHT FROM A SOUTHWARD EXTENSION OF SAID LAST DESCRIBED CHORD), A DISTANCE OF 104.17 FEET TO AN INTERSECTION WITH A LINE WHICH IS 231.00 FEET NORTH OF AND PARALLEL WITH THE NORTH LINE OF HARBOR POINT UNIT NO. 1, ACCORDING TO THE PLAT THEREOF RECORDED ON THE 13TH DAY OF DECEMBER, 1974 AS DOCUMENT 22935649;

THENCE WEST ALONG THE LAST DESCRIBED PARALLEL LINE, A DISTANCE OF 425.04 FEET TO AN INTERSECTION WITH THE NORTHWARD EXTENSION OF THE EAST LINE OF PARCEL "A" IN THE PLAT OF LAKE FRONT PLAZA SUBDIVISION (BEING A SUBDIVISION RECORDED ON THE 30TH DAY OF APRIL, 1962 AS DOCUMENT 18469161);

THENCE SOUTH ALONG SAID NORTHWARD EXTENSION OF SAID EAST

LINE OF PARCEL "A", SAID NORTHWARD EXTENSION BEING PERPENDICULAR TO THE LAST DESCRIBED LINE (SAID NORTHWARD EXTENSION BEING ALSO THE WEST LINE OF A STRIP OF LAND 66.00 FEET WIDE, DEDICATED AND CONVEYED TO SAID CITY OF CHICAGO FOR PUBLIC UTILITIES BY INSTRUMENT RECORDED OF THE 14TH DAY OF MARCH, 1979 AS DOCUMENT 24879730), A DISTANCE OF 176.19 TO THE NORTHEAST CORNER OF SAID PARCEL "A";

THENCE WEST ALONG THE NORTH LINE OF SAID PARCEL "A" AND THE WESTWARD EXTENSION THEREOF (SAID NORTH LINE BEING A LINE PERPENDICULAR TO THE LAST DESCRIBED COURSE), A DISTANCE OF 461.33 FEET TO AN INTERSECTION WITH THE WEST LINE OF NORTH FIELD BOULEVARD, AS DEDICATED AND CONVEYED TO SAID CITY OF CHICAGO BY INSTRUMENT RECORDED AS DOCUMENT NUMBER 86597179, AFORESAID;

THENCE SOUTH ALONG SAID WEST LINE OF NORTH FIELD BOULEVARD, A DISTANCE OF 61.41 FEET TO A POINT ON SAID WEST LINE WHICH IS 179.57 FEET NORTH OF THE INTERSECTION OF SAID WEST LINE AND THE SOUTHWARD EXTENSION THEREOF, WITH THE NORTH LINE OF EAST RANDOLPH STREET;

THENCE WEST ALONG A LINE PARALLEL WITH SAID NORTH LINE OF THE STRIP OF LAND 66.00 FEET WIDE, DEDICATED AND CONVEYED TO SAID CITY OF CHICAGO BY DOCUMENT NUMBER 86597180, A DISTANCE OF 179.06 FEET TO AN INTERSECTION WITH A LINE WHICH IS 606.00 FEET EAST OF AND PARALLEL WITH SAID EAST LINE OF NORTH COLUMBUS DRIVE;

THENCE SOUTH ALONG THE LAST DESCRIBED PARALLEL LINE, WHICH LINE IS PERPENDICULAR TO THE LAST DESCRIBED COURSE, A DISTANCE OF 105.00 FEET; THENCE WEST ALONG A LINE PERPENDICULAR TO THE LAST DESCRIBED COURSE A DISTANCE OF 42.00 FEET;

THENCE SOUTH ALONG A LINE PERPENDICULAR TO THE LAST DESCRIBED COURSE, A DISTANCE OF 72.19 FEET TO AN INTERSECTION WITH THE NORTH LINE OF EAST RANDOLPH STREET, AS SAID EAST RANDOLPH STREET WAS DEDICATED AND CONVEYED TO SAID CITY OF CHICAGO BY INSTRUMENT RECORDED ON THE 11TH DAY OF DECEMBER, 1979 AS DOCUMENT 25276446;

THENCE WEST ALONG SAID NORTH LINE OF EAST RANDOLPH STREET, A DISTANCE OF 229.01 FEET TO AN INTERSECTION WITH A LINE WHICH IS 335.00 FEET, MEASURED PERPENDICULARLY, EAST OF AND PARALLEL WITH SAID EAST LINE OF NORTH COLUMBUS DRIVE;

THENCE NORTH ALONG THE LAST DESCRIBED PARALLEL LINE A DISTANCE OF 303.61 FEET;

THENCE WEST ALONG A LINE WHICH IS PERPENDICULAR TO SAID EAST LINE OF NORTH COLUMBUS DRIVE, A DISTANCE OF 335.00 FEET TO THE POINT OF BEGINNING;

EXCEPTING FROM THE ABOVE DESCRIBED TRACT OF LAND THAT PART OF THE LAND, PROPERTY AND SPACE LYING BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF 38.00 FEET ABOVE CHICAGO CITY DATUM AND

LYING WITHIN THE BOUNDARIES PROJECTED VERTICALLY, OF THAT PART OF SAID TRACT OF LAND BOUNDED AND DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE EAST LINE OF N. COLUMBUS DRIVE (AS SAID N. COLUMBUS DRIVE WAS DEDICATED AND CONVEYED TO THE CITY OF CHICAGO BY INSTRUMENT RECORDED ON THE 5TH DAY OF JUNE 1972, AS DOCUMENT 21925615) SAID POINT BEING 461.18 FEET, AS MEASURED ALONG SAID EAST LINE, NORTH OF THE POINT OF INTERSECTION OF SAID EAST LINE WITH THE NORTH LINE OF EAST RANDOLPH STREET (AS SAID E. RANDOLPH STREET WAS DEDICATED AND CONVEYED TO THE CITY OF CHICAGO BY INSTRUMENT RECORDED ON THE 11TH DAY OF DECEMBER 1979, AS DOCUMENT 25276446) AND RUNNING

THENCE EAST ALONG A LINE PERPENDICULAR TO SAID EAST LINE OF N. COLUMBUS DRIVE, A DISTANCE OF 90.00 FEET TO THE POINT OF BEGINNING AT THE SOUTHWEST CORNER OF THE HEREINAFTER DESCRIBED LAND, PROPERTY AND SPACE;

THENCE NORTH ALONG A LINE PARALLEL WITH SAID EAST LINE OF N. COLUMBUS DRIVE, A DISTANCE OF 160.00 FEET;

THENCE EAST ALONG A LINE PERPENDICULAR TO THE LAST DESCRIBED LINE, A DISTANCE OF 90.00 FEET;

THENCE SOUTH ALONG A LINE PARALLEL WITH SAID EAST LINE OF N. COLUMBUS DRIVE, A DISTANCE OF 160.00 FEET;

THENCE WEST ALONG A LINE PERPENDICULAR TO THE LAST DESCRIBED LINE, A DISTANCE OF 90.00 FEET TO THE POINT OF BEGINNING.

AND ALSO EXCEPTING FROM SAID TRACT OF LAND THAT PART OF THE LAND, PROPERTY AND SPACE LYING BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF 44.00 FEET ABOVE CHICAGO CITY DATUM AND LYING WITHIN THE BOUNDARIES PROJECTED VERTICALLY OF THAT PART OF SAID TRACT OF LAND BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EAST LINE OF N. COLUMBUS DRIVE (AS SAID N. COLUMBUS DRIVE WAS DEDICATED AND CONVEYED TO THE CITY OF CHICAGO BY INSTRUMENT RECORDED ON THE 5TH DAY OF JUNE 1972, AS DOCUMENT 21925615) SAID POINT BEING 461.18 FEET, AS MEASURED ALONG SAID EAST LINE, NORTH OF THE POINT OF INTERSECTION OF SAID EAST LINE WITH THE NORTH LINE OF EAST RANDOLPH STREET (AS SAID E. RANDOLPH STREET WAS DEDICATED AND CONVEYED TO THE CITY OF CHICAGO BY INSTRUMENT RECORDED ON THE 11TH DAY OF DECEMBER 1979, AS DOCUMENT 25276446) AND RUNNING

THENCE NORTH ALONG SAID EAST LINE OF N. COLUMBUS DRIVE, A DISTANCE OF 160.00 FEET;

THENCE EAST ALONG A LINE PERPENDICULAR TO SAID EAST LINE, A DISTANCE OF 90.00 FEET;

THENCE SOUTH ALONG A LINE PARALLEL TO SAID EAST LINE OF N. COLUMBUS DRIVE, A DISTANCE OF 160.00 FEET;

THENCE WEST ALONG A LINE PERPENDICULAR TO THE LAST DESCRIBED LINE, A DISTANCE OF 90.00 FEET TO THE POINT OF BEGINNING.

EXHIBIT 1-1

20732020

EXHIBIT 8.3.1
LAND PARCEL PERCENTAGE

20732020

<u>PARCEL</u>	
Parcel 1	7.84%
Parcel 2	5.26%
Parcel 3	0.01%
Parcel 3a	1.16%
Parcel 3b	1.09%
Parcel 3c	0.85%
Parcel 3d	0.91%
Parcel 4	5.20%
Parcel 5	9.85%
Parcel 6	3.92%
Parcel 7	4.25%
Parcel 8	6.60%
Parcel 9	6.24%
Parcel 10	4.83%
Parcel 11	4.63%
Parcel 12	1.56%
Parcel 13	6.12%
Parcel 14	5.44%
Parcel 15	4.27%
Parcel 16	3.11%
Parcel 17	9.04%
Parcel 18	3.56%
Parcel 21	3.37%
Parcel 22	0.89%
	100.00%

EXHIBIT ATTACHED

0030325591

N9901678 NNAOT CM/JP 10f1

**FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS FOR LAKESHORE EAST**

THIS FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR LAKESHORE EAST ("Amendment") is made as of the 3rd day of MARCH, 2003, by Lakeshore East LLC, an Illinois limited liability company ("Declarant" and "Owner" of certain Parcels noted herein).

RECITALS:

A. Declarant, together with certain other owners who joined therein, executed that certain Declaration Of Covenants, Conditions, Restrictions And Easements For Lakeshore East dated as of June 26, 2002, which was recorded July 2, 2002 with the Cook County Recorder as Document No. 0020732020 ("Declaration").

B. The legal description for the aggregate of the parcels included in the Declaration is attached hereto as Exhibit R-1.

C. Declarant reserved the right pursuant to Section 16.6 of the Declaration to amend the Declaration if it determines in good faith that the amendment does not have a material adverse effect on any Parcel Owner (as defined in the Declaration) that does not consent to the amendment, which amendment is effective upon recording of such amendment, and which amendment need only be executed by Declarant.

D. Declarant is required pursuant to Section 16.11 of the Declaration to record an amendment to the Declaration at such time as City Areas (as defined in the Declaration) are vacated or acquired by the owner of a Parcel (as defined in the Declaration) confirming that the City Areas that were not part of the Project Parcel (as defined in the Declaration) when the Declaration was recorded are upon such vacation or acquisition immediately subject to the Declaration.

126
3/1/03
[Signature]

22 pgs

E. Declarant desires to amend the Declaration by inserting in Recital C of the Declaration the date that the PD (as defined in the Declaration) was enacted, replacing Exhibit 1-1 of the Declaration to reflect an adjustment of the boundary between Parcel 12 and Parcel 13, and limiting the ability to amend the Declaration as to the easement for park use granted in connection with the Neighborhood Park which is to be located on Parcel 19, all of which Parcels are owned by Declarant, and confirming that the City Areas are subject to the Declaration.

F. Declarant has determined in good faith that this Amendment does not have a material adverse effect on any Parcel Owner (as defined in the Declaration) that is not consenting to this Amendment, and that this Amendment therefore need only be executed by Declarant.

NOW, THEREFORE, in consideration of the foregoing and the covenants and agreements of the parties hereto, it is agreed as follows:

1. The recitals herein contained are hereby adopted and made a part hereof.
2. The date that the PD was adopted as recited in Recital C of the Declaration was June 19, 2002.
3. Exhibit 1-1 that was attached to the Declaration is hereby deleted and Exhibit 1-1 attached hereto is substituted therefor.
4. Pursuant to Section 16.11 of the Declaration, it is hereby confirmed that the City Areas described on Exhibit 16.11-1 attached hereto have become subject to the provisions of the Declaration.
5. The following is added at the end of Section 16.6 of the Declaration:

"Notwithstanding the foregoing, Declarant will not exercise its right to amend Section 5.4 of the Declaration granting an easement for pedestrian and park use for the benefit of the City of Chicago and Chicago Park District over the Neighborhood Park to be located on Parcel 19 without obtaining the prior written consent of the City of Chicago and Chicago Park District to any such amendment, which undertaking not to amend will be irrevocable and run with Parcel 19."
6. Except as expressly amended by this Amendment, the Declaration remains unmodified and in full force and effect.

IN WITNESS WHEREOF, the undersigned has executed this Amendment as of the day
and year first above written.

**DECLARANT AND OWNER OF
CERTAIN PARCELS NOTED HEREIN:**
LAKESHORE EAST LLC, an Illinois
limited liability company

By: 

Name: David Carlson

Its: a manager

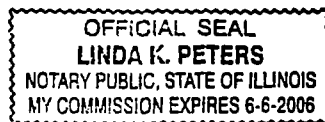
STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, Linda K. Peters a Notary Public in and for said County, in the State aforesaid,
DO HEREBY CERTIFY, that DAVID J. CARLINS, A MANAGER of LAKESHORE
EAST LLC, an Illinois limited liability company, who is personally known to me to be the same
person whose name is subscribed to the foregoing instrument, appeared before me this day in
person and acknowledged that he/she signed and delivered the said instrument as his/her own
free and voluntary act and as the free and voluntary act of said limited liability company, for the
uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 6th day of March, 2003.

Linda K. Peters

Notary Public



**CONSENT TO FIRST AMENDMENT TO DECLARATION OF COVENANTS,
CONDITIONS, RESTRICTIONS AND EASEMENTS FOR LAKESHORE EAST**

Declarant, together with certain other owners who joined therein, executed that certain Declaration Of Covenants, Conditions, Restrictions And Easements For Lakeshore East dated as of June 26, 2002, which was recorded July 2, 2002 with the Cook County Illinois Recorder as Document No. 0020732020, which is being amended by the First Amendment to Declaration Of Covenants, Conditions, Restrictions And Easements For Lakeshore East to which this consent is attached (as amended, the "Declaration"). The undersigned is the holder of a Mortgage which was recorded July 2, 2002 with the Cook County Illinois Recorder as Document No. 0020731607 (together with the other loan documents related thereto, as they may be amended, "Loan Documents"), and hereby consents to the foregoing and acknowledges and agrees that the Loan Documents are subject and subordinate to the terms of the Declaration.

LASALLE BANK NATIONAL
ASSOCIATION, as Administrative Agent
and Lender

By: *Jason M. Costello*
Name: JASON M. COSTELLO
Its: VP

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, RAE RIVERO, a Notary Public in and for said County, in the State aforesaid,
DO HEREBY CERTIFY, that JASON M. COSTELLO, VICE PRESIDENT of LASALLE
BANK NATIONAL ASSOCIATION, who is personally known to me to be the same person
whose name is subscribed to the foregoing instrument, appeared before me this day in person and
acknowledged that he/she signed and delivered the said instrument as his/her own free and
voluntary act and as the free and voluntary act of said entity, for the uses and purposes therein set
forth.

GIVEN under my hand and Notarial Seal this 4TH day of MARCH, 2003.



Rae Rivero
Notary Public

**CONSENT TO FIRST AMENDMENT TO DECLARATION OF COVENANTS,
CONDITIONS, RESTRICTIONS AND EASEMENTS FOR LAKESHORE EAST**

Declarant, together with certain other owners who joined therein, executed that certain Declaration Of Covenants, Conditions, Restrictions And Easements For Lakeshore East dated as of June 26, 2002, which was recorded July 2, 2002 with the Cook County Illinois Recorder as Document No. 0020732020, which is being amended by the First Amendment to Declaration Of Covenants, Conditions, Restrictions And Easements For Lakeshore East to which this consent is attached (as amended, the "Declaration"). The undersigned is the holder of a Junior Mortgage which was recorded July 2, 2002 with the Cook County Illinois Recorder as Document No. 0020731611 (together with the other loan documents related thereto, as they may be amended, "Loan Documents"), and hereby consents to the foregoing and acknowledges and agrees that the Loan Documents are subject and subordinate to the terms of the Declaration.

ILLINOIS CENTER II LLC

By: Benjamin A. Lewis

Name: BENJAMIN A. LEWIS

Its: Authorized Signatory

MID-AMERICA IMPROVEMENT
CORPORATION

By: _____

Name: _____

Its: _____

**CONSENT TO FIRST AMENDMENT TO DECLARATION OF COVENANTS,
CONDITIONS, RESTRICTIONS AND EASEMENTS FOR LAKESHORE EAST**

Declarant, together with certain other owners who joined therein, executed that certain Declaration Of Covenants, Conditions, Restrictions And Easements For Lakeshore East dated as of June 26, 2002, which was recorded July 2, 2002 with the Cook County Illinois Recorder as Document No. 0020732020, which is being amended by the First Amendment to Declaration Of Covenants, Conditions, Restrictions And Easements For Lakeshore East to which this consent is attached (as amended, the "Declaration"). The undersigned is the holder of a Junior Mortgage which was recorded July 2, 2002 with the Cook County Illinois Recorder as Document No. 0020731611 (together with the other loan documents related thereto, as they may be amended, "Loan Documents"), and hereby consents to the foregoing and acknowledges and agrees that the Loan Documents are subject and subordinate to the terms of the Declaration.

ILLINOIS CENTER II LLC

By: _____
Name: _____
Its: _____

MID-AMERICA IMPROVEMENT
CORPORATION

By: John F. Kierbaum
Name: John F. Kierbaum
Its: President

I, Mike J. Haughe, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that Benjamin A. Levee, Authorized Signatory of ILLINOIS CENTER II LLC, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said entity, for the uses and purposes therein set forth.

Grace T. Haggan
Notary Public

I, _____, a Notary Public in and for said County, in the State aforesaid,
DO HEREBY CERTIFY, that _____, _____ of MID-AMERICA
IMPROVEMENT CORPORATION, who is personally known to me to be the same person
whose name is subscribed to the foregoing instrument, appeared before me this day in person and
acknowledged that he/she signed and delivered the said instrument as his/her own free and
voluntary act and as the free and voluntary act of said entity, for the uses and purposes therein set
forth.

Notary Public

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, _____, a Notary Public in and for said County, in the State aforesaid,
DO HEREBY CERTIFY, that _____, _____ of ILLINOIS
CENTER II LLC, who is personally known to me to be the same person whose name is
subscribed to the foregoing instrument, appeared before me this day in person and acknowledged
that he/she signed and delivered the said instrument as his/her own free and voluntary act and as
the free and voluntary act of said entity, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this _____ day of _____, 2003.

MINNESOTA
STATE OF ~~ILLINOIS~~)
) SS
HENNEPIN
COUNTY OF ~~COOK~~)

Notary Public

I, KATHLEEN M. BOWLING, a Notary Public in and for said County, in the State aforesaid,
DO HEREBY CERTIFY, that JOHN F. BIERBAUM, PRESIDENT of MID-AMERICA
IMPROVEMENT CORPORATION, who is personally known to me to be the same person
whose name is subscribed to the foregoing instrument, appeared before me this day in person and
acknowledged that he/she signed and delivered the said instrument as his/her own free and
voluntary act and as the free and voluntary act of said entity, for the uses and purposes therein set
forth.

GIVEN under my hand and Notarial Seal this 5th day of MARCH, 2003.

Kathleen M Bowling
Notary Public



**CONSENT TO FIRST AMENDMENT TO DECLARATION OF COVENANTS,
CONDITIONS, RESTRICTIONS AND EASEMENTS FOR LAKESHORE EAST**

Declarant, together with certain other owners who joined therein, executed that certain Declaration Of Covenants, Conditions, Restrictions And Easements For Lakeshore East dated as of June 26, 2002, which was recorded July 2, 2002 with the Cook County Illinois Recorder as Document No. 0020732020, which is being amended by the First Amendment to Declaration Of Covenants, Conditions, Restrictions And Easements For Lakeshore East to which this consent is attached (as amended, the "Declaration"). The undersigned is the holder of a Mortgage which was recorded July 2, 2002 with the Cook County Illinois Recorder as Document No. 0020731609 (together with the other loan documents related thereto, "Loan Documents"), and hereby consents to the foregoing and acknowledges and agrees that the Loan Documents are subject and subordinate to the terms of the Declaration.

THE PRIVATE BANK AND TRUST
COMPANY -

By: Allison M. Mandell

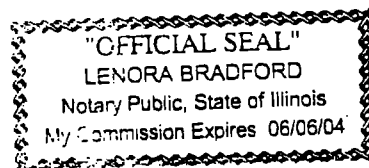
Name: ALLISON M. MANDELL

Its: ASSOCIATE MANAGING DIRECTOR

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, Lenora Bradford, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that Allison M Mandell, ASSOCIATE MANAGING DIRECTOR of THE PRIVATE BANK AND TRUST COMPANY, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said entity, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 5th day of March, 2003.



Lenora Bradford
Notary Public

PROPERTY ADDRESS: 221 Columbus Drive, Chicago, Illinois

PERMANENT INDEX NUMBERS:

17-10-318-014
17-10-318-015
17-10-318-016
17-10-318-023
17-10-318-024
17-10-318-026
17-10-318-027
17-10-318-029
17-10-318-030
17-10-318-032
17-10-318-033
17-10-318-035
17-10-318-036
17-10-400-015
17-10-400-016
17-10-401-010
17-10-401-012
17-10-401-013

This instrument was prepared by
and upon recording return to:
Alzheimer & Gray
10 S. Wacker Drive Suite 4000
Chicago, Illinois 60606
Attention: Edward E. Wicks

EXHIBIT R-1

A TRACT OF LAND, COMPRISED OF THAT PART OF THE LANDS LYING EAST OF AND ADJOINING FORT DEARBORN ADDITION TO CHICAGO, SAID ADDITION BEING THE WHOLE OF THE SOUTHWEST FRACTIONAL QUARTER OF SECTION 10, TOWNSHIP 39 NORTH RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EAST LINE OF NORTH COLUMBUS DRIVE (AS SAID NORTH COLUMBUS DRIVE WAS DEDICATED AND CONVEYED TO THE CITY OF CHICAGO BY INSTRUMENT RECORDED IN THE RECORDER'S OFFICE OF COOK COUNTY, ILLINOIS, ON THE 5TH DAY OF JUNE 1972, AS DOCUMENT 21925615) SAID POINT BEING 300.00 FEET, MEASURED ALONG SAID EAST LINE, NORTH OF THE POINT OF INTERSECTION OF SAID EAST LINE (EXTENDED SOUTH) WITH THE NORTH LINE OF EAST RANDOLPH STREET (AS SAID EAST RANDOLPH STREET WAS DEDICATED AND CONVEYED TO THE CITY OF CHICAGO BY INSTRUMENT RECORDED IN SAID RECORDER'S OFFICE ON THE 11TH DAY OF DECEMBER, 1979, AS DOCUMENT 25276446) AND RUNNING

THENCE NORTH ALONG SAID EAST LINE OF NORTH COLUMBUS DRIVE, A DISTANCE OF 468.88 FEET TO A POINT WHICH IS 768.88 FEET, AS MEASURED ALONG SAID EAST LINE AND THE SOUTHWARD EXTENSION THEREOF, NORTH OF THE INTERSECTION WITH SAID NORTH LINE OF EAST RANDOLPH STREET;

THENCE EAST ALONG A LINE PERPENDICULAR TO SAID EAST LINE OF NORTH COLUMBUS DRIVE, A DISTANCE OF 160.57 FEET;

THENCE NORTH ALONG A LINE PERPENDICULAR TO THE LAST DESCRIBED COURSE, A DISTANCE OF 146.62 FEET;

THENCE EAST ALONG A LINE PERPENDICULAR TO THE LAST DESCRIBED COURSE, A DISTANCE OF 221.17 FEET;

THENCE NORTH ALONG A LINE PERPENDICULAR TO THE LAST DESCRIBED COURSE, A DISTANCE OF 141.11 FEET TO AN INTERSECTION WITH THE SOUTHERLY LINE OF EAST WACKER DRIVE, AS SAID EAST WACKER DRIVE WAS DEDICATED AND CONVEYED TO SAID CITY OF CHICAGO BY INSTRUMENT RECORDED ON THE 5TH DAY OF JUNE, 1972 AS DOCUMENT NUMBER 21925615;

THENCE SOUTHEASTWARDLY ALONG SAID SOUTHERLY LINE OF EAST WACKER DRIVE (DEFLECTING 94 DEGREES 35 MINUTES 31 SECONDS TO THE RIGHT FROM THE NORTHWARD EXTENSION OF THE LAST DESCRIBED COURSE), A DISTANCE OF 390.00 FEET TO AN INTERSECTION WITH THE NORTHWARD EXTENSION OF THE WEST LINE OF NORTH FIELD BOULEVARD, 127.00 FEET WIDE, AS SAID NORTH FIELD BOULEVARD WAS DEDICATED AND CONVEYED TO SAID CITY OF CHICAGO BY INSTRUMENT RECORDED ON THE 12TH DAY OF DECEMBER 1986 AS DOCUMENT 86597179;

THENCE SOUTHEASTWARDLY ALONG THE SOUTHERLY LINE OF EAST WACKER DRIVE, AS SAID EAST WACKER DRIVE WAS DEDICATED AND CONVEYED TO THE CITY OF CHICAGO BY SAID INSTRUMENT RECORDED ON THE 12TH DAY OF DECEMBER, 1986 AS DOCUMENT 86597178 (SAID SOUTHERLY LINE DEFLECTING 94 DEGREES 48 MINUTES 48 SECONDS TO THE RIGHT FROM THE NORTHWARD EXTENSION OF SAID WEST LINE OF NORTH FIELD BOULEVARD), A

DISTANCE OF 127.45 FEET TO AN INTERSECTION WITH THE NORTHWARD EXTENSION OF THE EAST LINE OF NORTH FIELD BOULEVARD, AFORESAID;

THENCE CONTINUING SOUTHEASTWARDLY ALONG SAID SOUTHERLY LINE OF EAST WACKER DRIVE AS DEDICATED AND CONVEYED BY DOCUMENT NUMBER 86597178 (DEFLECTING 96 DEGREES 28 MINUTES 40 SECONDS TO THE RIGHT WITH THE NORTHWARD EXTENSION OF SAID EAST LINE OF NORTH FIELD BOULEVARD), A DISTANCE OF 351.08 FEET TO AN INTERSECTION WITH THE WEST LINE OF THE STRIP OF LAND 66.00 FEET WIDE, AS DEDICATED AND CONVEYED FOR PUBLIC UTILITIES TO SAID CITY OF CHICAGO BY INSTRUMENT RECORDED ON THE 12TH DAY OF DECEMBER, 1986 AS DOCUMENT 86597181;

THENCE CONTINUING SOUTHEASTWARDLY ALONG SAID SOUTHERLY LINE OF EAST WACKER DRIVE AS DEDICATED AND CONVEYED BY SAID DOCUMENT NUMBER 86597178 (SAID SOUTHERLY LINE DEFLECTING 94 DEGREES 35 MINUTES 50 SECONDS TO THE RIGHT WITH THE NORTHWARD EXTENSION OF SAID WEST LINE OF THE 66.00 FOOT WIDE STRIP OF LAND, AFORESAID), A DISTANCE OF 440.26 FEET TO AN INTERSECTION WITH THE WEST LINE OF NORTH LAKE SHORE DRIVE, AS SAID NORTH LAKE SHORE DRIVE WAS DEDICATED BY INSTRUMENT RECORDED ON THE 14TH DAY OF MARCH 1979 AS DOCUMENT 24879733;

THENCE SOUTH ALONG SAID WEST LINE OF NORTH LAKE SHORE DRIVE, DEFLECTING 85 DEGREES 24 MINUTES 10 SECONDS TO THE RIGHT FROM AN EASTWARD EXTENSION OF THE LAST DESCRIBED COURSE A DISTANCE OF 356.12 FEET;

THENCE CONTINUING SOUTHWARDLY ALONG SAID WESTERLY LINE OF NORTH LAKE SHORE DRIVE, SAID WESTERLY LINE BEING HERE AN ARC OF A CIRCLE, CONCAVE WESTERLY AND HAVING A RADIUS OF 5719.58 FEET, AN ARC DISTANCE OF 71.34 FEET (THE CHORD OF SAID ARC DEFLECTING 04 DEGREES 17 MINUTES 51.5 SECONDS TO THE RIGHT FROM A SOUTHWARD EXTENSION OF THE LAST DESCRIBED COURSE AND HAVING A LENGTH OF 71.34 FEET);

THENCE CONTINUING SOUTHWARDLY ALONG SAID WESTERLY LINE OF NORTH LAKE SHORE DRIVE (SAID WESTERLY LINE BEING HERE A STRAIGHT LINE DEFLECTING 00 DEGREES 21 MINUTES 26.5 SECONDS TO THE RIGHT FROM A SOUTHWARD EXTENSION OF SAID LAST DESCRIBED CHORD), A DISTANCE OF 104.17 FEET TO AN INTERSECTION WITH A LINE WHICH IS 231.00 FEET NORTH OF AND PARALLEL WITH THE NORTH LINE OF HARBOR POINT UNIT NO. 1, ACCORDING TO THE PLAT THEREOF RECORDED ON THE 13TH DAY OF DECEMBER, 1974 AS DOCUMENT 22935649;

THENCE WEST ALONG THE LAST DESCRIBED PARALLEL LINE, A DISTANCE OF 425.04 FEET TO AN INTERSECTION WITH THE NORTHWARD EXTENSION OF THE EAST LINE OF PARCEL "A" IN THE PLAT OF LAKE FRONT PLAZA SUBDIVISION (BEING A SUBDIVISION RECORDED ON THE 30TH DAY OF APRIL, 1962 AS DOCUMENT 18469161);

THENCE SOUTH ALONG SAID NORTHWARD EXTENSION OF SAID EAST LINE OF PARCEL "A", SAID NORTHWARD EXTENSION BEING PERPENDICULAR TO THE LAST DESCRIBED LINE (SAID NORTHWARD EXTENSION BEING ALSO THE WEST LINE OF A STRIP OF LAND 66.00 FEET WIDE, DEDICATED AND CONVEYED TO SAID CITY OF CHICAGO FOR PUBLIC UTILITIES BY INSTRUMENT

RECORDED OF THE 14TH DAY OF MARCH, 1979 AS DOCUMENT 24879730), A DISTANCE OF 176.19 TO THE NORTHEAST CORNER OF SAID PARCEL "A";

THENCE WEST ALONG THE NORTH LINE OF SAID PARCEL "A" AND THE WESTWARD EXTENSION THEREOF (SAID NORTH LINE BEING A LINE PERPENDICULAR TO THE LAST DESCRIBED COURSE), A DISTANCE OF 461.33 FEET TO AN INTERSECTION WITH THE WEST LINE OF NORTH FIELD BOULEVARD, AS DEDICATED AND CONVEYED TO SAID CITY OF CHICAGO BY INSTRUMENT RECORDED AS DOCUMENT NUMBER 86597179, AFORESAID;

THENCE SOUTH ALONG SAID WEST LINE OF NORTH FIELD BOULEVARD, A DISTANCE OF 61.41 FEET TO A POINT ON SAID WEST LINE WHICH IS 179.57 FEET NORTH OF THE INTERSECTION OF SAID WEST LINE AND THE SOUTHWARD EXTENSION THEREOF, WITH THE NORTH LINE OF EAST RANDOLPH STREET;

THENCE WEST ALONG A LINE PARALLEL WITH SAID NORTH LINE OF THE STRIP OF LAND 66.00 FEET WIDE, DEDICATED AND CONVEYED TO SAID CITY OF CHICAGO BY DOCUMENT NUMBER 86597180, A DISTANCE OF 179.06 FEET TO AN INTERSECTION WITH A LINE WHICH IS 606.00 FEET EAST OF AND PARALLEL WITH SAID EAST LINE OF NORTH COLUMBUS DRIVE;

THENCE SOUTH ALONG THE LAST DESCRIBED PARALLEL LINE, WHICH LINE IS PERPENDICULAR TO THE LAST DESCRIBED COURSE, A DISTANCE OF 105.00 FEET; THENCE WEST ALONG A LINE PERPENDICULAR TO THE LAST DESCRIBED COURSE A DISTANCE OF 42.00 FEET;

THENCE SOUTH ALONG A LINE PERPENDICULAR TO THE LAST DESCRIBED COURSE, A DISTANCE OF 72.19 FEET TO AN INTERSECTION WITH THE NORTH LINE OF EAST RANDOLPH STREET, AS SAID EAST RANDOLPH STREET WAS DEDICATED AND CONVEYED TO SAID CITY OF CHICAGO BY INSTRUMENT RECORDED ON THE 11TH DAY OF DECEMBER, 1979 AS DOCUMENT 25276446;

THENCE WEST ALONG SAID NORTH LINE OF EAST RANDOLPH STREET, A DISTANCE OF 229.01 FEET TO AN INTERSECTION WITH A LINE WHICH IS 335.00 FEET, MEASURED PERPENDICULARLY, EAST OF AND PARALLEL WITH SAID EAST LINE OF NORTH COLUMBUS DRIVE;

THENCE NORTH ALONG THE LAST DESCRIBED PARALLEL LINE A DISTANCE OF 303.61 FEET;

THENCE WEST ALONG A LINE WHICH IS PERPENDICULAR TO SAID EAST LINE OF NORTH COLUMBUS DRIVE, A DISTANCE OF 335.00 FEET TO THE POINT OF BEGINNING;

EXCEPTING FROM THE ABOVE DESCRIBED TRACT OF LAND THAT PART OF THE LAND, PROPERTY AND SPACE LYING BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF 38.00 FEET ABOVE CHICAGO CITY DATUM AND LYING WITHIN THE BOUNDARIES PROJECTED VERTICALLY, OF THAT PART OF SAID TRACT OF LAND BOUNDED AND DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE EAST LINE OF N. COLUMBUS DRIVE (AS SAID N. COLUMBUS DRIVE WAS DEDICATED AND CONVEYED TO THE CITY OF CHICAGO BY INSTRUMENT RECORDED ON THE 5TH DAY OF JUNE 1972, AS DOCUMENT 21925615) SAID POINT BEING 461.18 FEET, AS MEASURED ALONG SAID EAST LINE, NORTH OF THE POINT OF INTERSECTION OF SAID EAST LINE WITH

THE NORTH LINE OF EAST RANDOLPH STREET (AS SAID E. RANDOLPH STREET WAS DEDICATED AND CONVEYED TO THE CITY OF CHICAGO BY INSTRUMENT RECORDED ON THE 11TH DAY OF DECEMBER 1979, AS DOCUMENT 25276446) AND RUNNING

THENCE EAST ALONG A LINE PERPENDICULAR TO SAID EAST LINE OF N. COLUMBUS DRIVE, A DISTANCE OF 90.00 FEET TO THE POINT OF BEGINNING AT THE SOUTHWEST CORNER OF THE HEREINAFTER DESCRIBED LAND, PROPERTY AND SPACE;

THENCE NORTH ALONG A LINE PARALLEL WITH SAID EAST LINE OF N. COLUMBUS DRIVE, A DISTANCE OF 160.00 FEET;

THENCE EAST ALONG A LINE PERPENDICULAR TO THE LAST DESCRIBED LINE, A DISTANCE OF 90.00 FEET;

THENCE SOUTH ALONG A LINE PARALLEL WITH SAID EAST LINE OF N. COLUMBUS DRIVE, A DISTANCE OF 160.00 FEET;

THENCE WEST ALONG A LINE PERPENDICULAR TO THE LAST DESCRIBED LINE, A DISTANCE OF 90.00 FEET TO THE POINT OF BEGINNING.

AND ALSO EXCEPTING FROM SAID TRACT OF LAND THAT PART OF THE LAND, PROPERTY AND SPACE LYING BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF 44.00 FEET ABOVE CHICAGO CITY DATUM AND LYING WITHIN THE BOUNDARIES PROJECTED VERTICALLY OF THAT PART OF SAID TRACT OF LAND BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EAST LINE OF N. COLUMBUS DRIVE (AS SAID N. COLUMBUS DRIVE WAS DEDICATED AND CONVEYED TO THE CITY OF CHICAGO BY INSTRUMENT RECORDED ON THE 5TH DAY OF JUNE 1972, AS DOCUMENT 21925615) SAID POINT BEING 461.18 FEET, AS MEASURED ALONG SAID EAST LINE, NORTH OF THE POINT OF INTERSECTION OF SAID EAST LINE WITH THE NORTH LINE OF EAST RANDOLPH STREET (AS SAID E. RANDOLPH STREET WAS DEDICATED AND CONVEYED TO THE CITY OF CHICAGO BY INSTRUMENT RECORDED ON THE 11TH DAY OF DECEMBER 1979, AS DOCUMENT 25276446) AND RUNNING

THENCE NORTH ALONG SAID EAST LINE OF N. COLUMBUS DRIVE, A DISTANCE OF 160.00 FEET;

THENCE EAST ALONG A LINE PERPENDICULAR TO SAID EAST LINE, A DISTANCE OF 90.00 FEET;

THENCE SOUTH ALONG A LINE PARALLEL TO SAID EAST LINE OF N. COLUMBUS DRIVE, A DISTANCE OF 160.00 FEET;

THENCE WEST ALONG A LINE PERPENDICULAR TO THE LAST DESCRIBED LINE, A DISTANCE OF 90.00 FEET TO THE POINT OF BEGINNING.

EXHIBIT 16.11-1

1. CERTAIN PARTS OF N. FIELD BOULEVARD AS DEDICATED BY INSTRUMENT RECORDED DECEMBER 12, 1986 AS DOCUMENT 86-597179, WHICH PARTS LIE SOUTH OF THE SOUTHERLY LINE OF E. WACKER DRIVE, AND NORTH OF A LINE WHICH IS 105.00 FEET, (AS MEASURED ALONG THE EAST LINE OF SAID N. FIELD BOULEVARD) NORTH OF THE NORTHWEST CORNER OF PARCEL "A" IN LAKE FRONT PLAZA SUBDIVISION, AND WHICH PARTS ARE DELINEATED AND SHOWN ON EXHIBIT "A" ATTACHED HERETO;

ALSO, THAT PART OF TRACT III OF THE EASEMENT, 140 FEET WIDE, GRANTED TO THE CITY OF CHICAGO FOR CERTAIN PUBLIC UTILITIES, BY INSTRUMENT RECORDED ON MAY 14, 1962 AS DOCUMENT 18474522, AND WHICH PART LIES SOUTH OF THE NORTH LINE OF TRACT II OF SAID DOCUMENT 18474522, AND WHICH PART IS SHOWN AND DELINEATED ON EXHIBIT "A" ATTACHED HERETO.

2. THE STRIP OF LAND, 66.00 FEET WIDE, LYING BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF 20.00 FEET ABOVE CHICAGO CITY DATUM AS DEDICATED AND CONVEYED TO THE CITY OF CHICAGO BY INSTRUMENT RECORDED ON DECEMBER 12, 1986 AS DOCUMENT 86-597182; AND ALSO THAT PORTION OF TRACT II, BEING A STRIP OF LAND, 66.00 FEET WIDE, COMPRISING A PORTION OF THE EASEMENT FOR CERTAIN PUBLIC UTILITIES AS GRANTED TO THE CITY OF CHICAGO BY EASEMENT AGREEMENT RECORDED MAY 14, 1962 AS DOCUMENT 18474522, WHICH PORTION LIES EAST OF A LINE WHICH IS 160.57 FEET, MEASURED PERPENDICULARLY, EAST OF THE EAST LINE OF N. COLUMBUS DRIVE.

THE STRIP OF LAND, 66.0 FEET WIDE, LYING BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF 20.00 FEET ABOVE CHICAGO CITY DATUM AS DEDICATED AND CONVEYED TO THE CITY OF CHICAGO BY INSTRUMENT RECORDED DECEMBER 12, 1986 AS DOCUMENT 86-597180

3. THAT PART OF THE STRIP OF LAND, 66.00 FEET WIDE, LYING BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF 20.92 FEET ABOVE CHICAGO CITY DATUM AS DEDICATED AND CONVEYED TO THE CITY OF CHICAGO BY INSTRUMENT RECORDED MARCH 14, 1979 AS DOCUMENT 24879730, WHICH PART LIES EAST OF THE EAST LINE OF NORTH FIELD BOULEVARD, AND WEST OF NORTHWARD EXTENSION OF THE EAST LINE OF PARCEL "A" IN LAKE FRONT PLAZA SUBDIVISION, AND WHICH PART ALSO LIES NORTH OF A LINE WHICH IS 176.19 FEET NORTH OF AND PARALLEL WITH THE NORTH LINE OF SAID PARCEL "A", AND SOUTH OF THE NORTH LINE OF SAID STRIP OF LAND DEDICATED AND CONVEYED BY SAID DOCUMENT 24879730;

ALSO, THE STRIP OF LAND, 66 FEET WIDE, LYING BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF 20.00 FEET ABOVE CHICAGO CITY DATUM, AS DEDICATED AND CONVEYED TO THE CITY OF CHICAGO BY INSTRUMENT RECORDED DECEMBER 12, 1986 AS DOCUMENT 86-597181

EXHIBIT "A" TO EXHIBIT 16.11-1

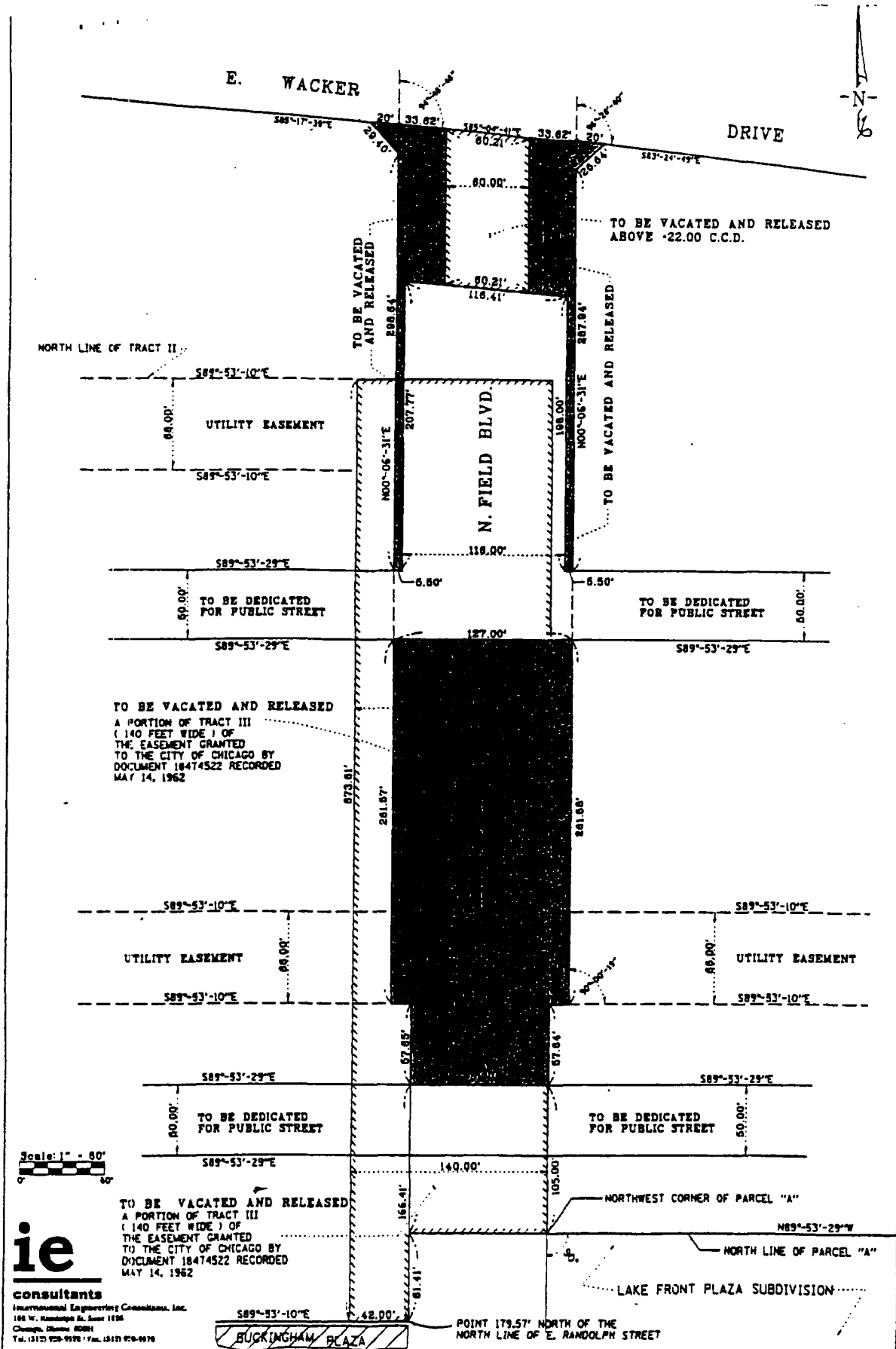
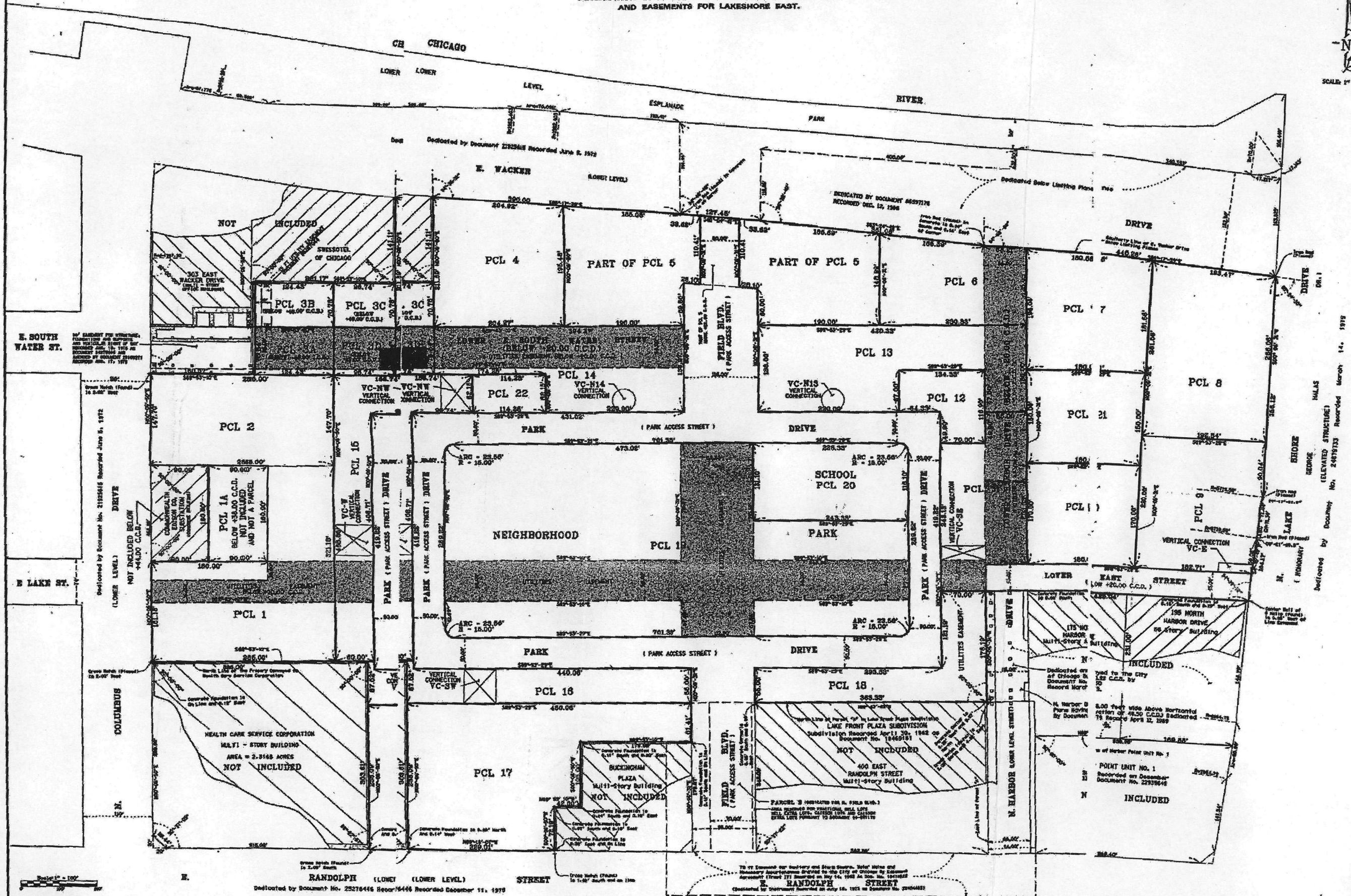


EXHIBIT 1-1

DECLARATION OF CONVENANTS, CONDITIONS, RESTRICTIONS
AND EASEMENTS FOR LAKESHORE EAST.



DATE: JUNE 25, 2002
JOB NO. C01026-A
PREPARED FOR: LAKESHORE EAST, L.L.C.
PREPARED BY:

DENOTES ON SITES ON SHEET 1
WITH THE EASEMENTS

NOTES
LOCATIONS OF THE VERTICAL CONNECTIONS ARE APPROXIMATE.

NOTES
PCL 1 THROUGH PCL 22 ARE PARCEL DESIGNATIONS

PLATINGS SHOWN HEREON ARE WITH RESPECT TO CHICAGO CITY DATUM (C.C.D.)

LOWER LEVEL
(APPROXIMATELY +8.00 C.C.D.)